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No. 15404

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United States
Court of Appeals
for the Ninth Circuit

A. J. KAHN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division.

FILED
MAR 19 1957
PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—3-8-57

No. 15404

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellant:

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Los Angeles 13, California.

For Appellee:

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U. S. Attorney,

LOUIS LEE ABBOTT,
Asst. U. S. Attorney,
Chief, Criminal Division,

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Asst. U. S. Attorney,
Asst. Chief, Criminal Division,
600 Federal Building,
Los Angeles 12, California.

United States District Court for the Southern District of California, Central Division

No. 24572

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. J. KAHN,

Defendant,

INFORMATION

[I.R.C. (1939), Secs. 2707(b), 3285, 3287, 3290, and 3294(c)—Failure to Pay Occupational and Excise Taxes on Wagers.]

The United States Attorney charges:

Count One

[I.R.C. (1939), Sec. 3290, 3294(c), 2707(b)]

During the tax year beginning July 1, 1953, and ending June 30, 1954, in San Diego County, California, defendant A. J. Kahn engaged in the business of accepting wagers with respect to horse races, and received wagers with respect to horse races for and on behalf of persons engaged in such business; by reason of such activity he was required by law to pay the occupational tax (wagering) as imposed by Section 3290 of the Internal Revenue Code, 1939, to the District Director of Internal Revenue, at Los Angeles, California, within the Central Division of the Southern District of California; and, well knowing these facts, the defendant

did wilfully and knowingly fail to pay said tax to said District Director or to any other proper officer of the United States. [2*]

Count Two

[I.R.C. (1939), Secs. 3285, 3287, 2707(b)]

During the month of September, 1953, in San Diego County, California, defendant A. J. Kahn engaged in the business of accepting wagers with respect to horse races, and did accept wagers in the amount of $1,970.00, upon which wagers there was due and owing to the United States of America an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, in the amount of $197.00, which he was required by law, on or before October 31, 1953, to pay to the District Director of Internal Revenue, at Los Angeles, California, within the Central Division of the Southern District of California; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax to the said District Director or to any other proper officer of the United States. [3]

Count Three

[I.R.C. (1939), Secs. 3285, 3287, 2707(b)]

During the month of October, 1953, in San Diego County, California, defendant A. J. Kahn engaged in the business of accepting wagers with respect to horse races, and did accept wagers in the amount of $820.00, upon which wagers there was due and

*Page numbering appearing at foot of page of original Certified Transcript of Record.

owing to the United States of America an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, in the amount of $82.00, which he was required by law, on or before November 30, 1953, to pay to the District Director of Internal Revenue, at Los Angeles, California, within the Central Division of the Southern District of California; and, well knowing all the foregoing facts, the defendant wilfully and knowingly failed to pay said tax to the said District Director or to any other proper officer of the United States. [4]

Count Four

[I.R.C. (1939), Secs. 3285, 3287, 2707(b)]

During the month of December, 1953, in San Diego County, California, defendant A. J. Kahn engaged in the business of accepting wagers with respect to horse races, and did accept wagers in the amount of $1,400.00, upon which wagers there was due and owing to the United States of America an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, in the amount of $140.00, which he was required by law, on or before January 31, 1954, to pay to the District Director of Internal Revenue, at Los Angeles, California, within the Central Division of the Southern District of California; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax to the said District Director or to any other proper officer of the United States. [5]

Count Five

[I.R.C. (1939), Secs. 3285, 3287, 2707(b)]

During the month of March, 1954, in San Diego County, California, defendant A. J. Kahn engaged in the business of accepting wagers with respect to horse races, and did accept wagers in the amount of $5,080.00, upon which wagers there was due and owing to the United States of America an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, in the amount of $508.00, which he was required by law, on or before April 30, 1954, to pay to the District Director of Internal Revenue, at Los Angeles, California, within the Central Division of the Southern District of California; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax to the said District Director or to any other proper officer of the United States. [6]

LAUGHLIN E. WATERS,
United States Attorney,

/s/ LLOYD F. DUNN,
Assistant U. S. Attorney.

[Endorsed]: Filed November 17, 1955. [6]

[Title of District Court and Cause.]

WAIVER OF DEFENDANT'S PRESENCE
(Rule 43 F.R.C.P.)

The undersigned defendant hereby waives the right to be present in person upon the hearing of any motion or other proceeding in this cause, including when the case is ordered set for trial, when a continuance is ordered, and when any other action is taken by the court before, during or after trial, except upon arraignment, plea, empanelment of jury and imposition of sentence.

The undersigned defendant hereby requests the court to proceed during any absence of his which the court may permit pursuant to this waiver; and hereby agrees that his interests will be deemed represented at all times by the presence of his attorney the same as if the defendant himself were personally in court; and further agrees to be present in court ready for trial any day and hour the court may fix in his absence.

Nov. 16, 1955.

/s/ A. J. KAHN,
Defendant.

Approved Nov. 16, 1955.

/s/ CHARLES H. CARR,
Attorney for Defendant.

[Endorsed]: Filed November 17, 1955. [7]

[Title of District Court and Cause.]

MINUTES OF THE COURT
NOV. 17, 1955
At: Los Angeles, Calif.

Present: Hon. Harry C. Westover, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: Lloyd F. Dunn.
Counsel for Defendant: Chas. H. Carr.
Defendant present on bond.

Proceedings:

Filed Information.

Defendant is arraigned and pleads not guilty to all five counts of Information.

It Is Ordered that cause is continued to Jan. 16, 1956, 10 a.m., for setting for trial; defendant to remain on bond.

Filed appearance praecipe of Attorney Chas. H. Carr, as counsel for defendant.

Filed waiver of defendant's presence.

JOHN A. CHILDRESS,
Clerk. [8]

[Title of District Court and Cause.]

MOTION FOR BILL OF PARTICULARS
(Rule 7(f) of F.R.Cr.P.)

Comes now the defendant and moves the court for an order directing plaintiff to furnish a Bill of

Particulars with respect to the Information in the within case as follows:

Specify as to Count One of the Information:

(1) The names and addresses of the persons who allegedly made wagers with defendant on horse races during the year beginning July 1, 1953, and ending June 30, 1954.

(2) The amounts of each of such alleged wagers.

(3) The dates when such wagers are alleged to have been made.

(4) The places where such wagers are alleged to have been made.

(5) The names and addresses of the persons engaged in the business of accepting wagers on horse races on whose behalf defendant allegedly received wagers on horse races. [9]

(6) The names and addresses of the persons who made the alleged wagers on horse races with defendant, which wagers defendant is alleged to have received for and on behalf of persons engaged in the business of accepting wagers with respect to horse races.

(7) The amounts of each of such wagers which defendant is alleged to have received for and on behalf of persons engaged in the business of accepting wagers with respect to horse races.

(8) The dates on which defendant is alleged to have received wagers for and on behalf of persons

engaged in the business of accepting wagers with respect to horse races.

(9) The places where defendant is alleged to have received wagers for and on behalf of persons engaged in the business of accepting wagers with respect to horse races.

Specify as to Each of Counts Two to Five, Inclusive, of the Information:

(1) The names and addresses of the persons who allegedly made wagers with defendant on horse races.

(2) The amounts of each of such wagers.

(3) The dates when such wagers are alleged to have been made.

(4) The places where such wagers are alleged to have been made.

Dated: November 28, 1955.

CHARLES H. CARR,
By /s/ WILLIAM K. RASMUSSEN,
Attorney for Defendant.

[Endorsed]: Filed November 28, 1955. [10]

[Title of District Court and Cause.]

MINUTES OF THE COURT
JAN. 16, 1956

Present: Hon. Leon R. Yankwich, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: Lloyd F. Dunn.
Counsel for Defendant: Chas. H. Carr.
Defendant present on bond.

Proceedings:

For setting for trial, and for hearing on motion for Bill of Particulars.

It Is Ordered that cause is continued to Jan. 30, 1956, 10 a.m., for setting for trial.

It Is Ordered that motion for Bill of Particulars is granted as to Items 2, 3, 4, and 5, and denied as to Item 1; counsel for Gov't to give detailed figures and names.

JOHN A. CHILDRESS
Clerk. [19]

[Title of District Court and Cause.]

BILL OF PARTICULARS

Comes Now the United States of America, plaintiff, and in response to the order of this Honorable Court granting in part defendant's motion for bill of particulars, furnishes the following information concerning matters alleged in the indictment:

I.

The wagers alleged in Counts Two through Five of the indictment were placed with defendant by Eddie Qualin and Hubert Ursich.

II.

The wagers alleged in Count Two of the indictment were placed with defendant on or about the

following dates and in the indicated total [20] amounts:

Dates	Amounts
September 5, 1953	$900.00
September 8, 1953	$120.00
September 9, 1953	$ 50.00
September 16, 1953	$300.00
September 22, 1953	$500.00
September 23, 1953	$100.00

III.

The wagers alleged in Count Three of the indictment were placed with defendant on or about the following dates and in the indicated total amounts:

Dates	Amounts
November 11, 1953	$620.00
November 24, 1953	$200.00

IV.

The wagers alleged in Count Four of the indictment were placed with defendant on or about the following dates and in the indicated total amounts:

Dates	Amounts
December 1, 1953	$ 50.00
December 5, 1953	$100.00
December 11, 1953	$300.00
December 14, 1953	$950.00

V.

The wagers alleged in Count Five of the indictment were placed with the defendant as follows: During March, 1954, the approximate date being

unknown, in the sum of $200.00 and, in addition, on or about the following dates in the total amounts indicated: [21]

Dates	Amounts
March 4, 1954	$ 200.00
March 5, 1954	$ 200.00
March 6, 1954	$ 550.00
March 9, 1954	$ 220.00
March 11, 1954	$ 200.00
March 12, 1954	$ 100.00
March 16, 1954	$ 450.00
March 17, 1954	$1600.00
March 18, 1954	$ 940.00
March 26, 1954	$ 420.00

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;

/s/ LLOYD F. DUNN,
Assistant U. S. Attorney, Asst. Chief, Criminal Division, Attorneys for Plaintiff, United States of America.

[Endorsed]: Filed January 20, 1956. [22]

[Title of District Court and Cause.]

STIPULATION FOR CONTINUANCE

It Appearing that the present trial date, August 23, 1956, in the above-entitled action would seriously inconvenience necessary Government witnesses who are fishermen and presently at sea.

It Is Hereby Stipulated between the parties hereto, by and through their respective counsel of record, that the present trial setting of August 23, 1956, may be vacated by the Court, and that the trial be reset for Wednesday, September 5, 1956, at 9:30 a.m., before the Honorable Thurmond Clarke, United States District Judge, or at such other time as may be convenient [34] to the Court.

Dated this 30th day of July, 1956.

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;

/s/ LLOYD F. DUNN,
Assistant U. S. Attorney, Asst. Chief, Criminal Division, Attorneys for Plaintiff, United States of America.

/s/ CHARLES H. CARR,
Attorney for Defendant.

It Is Hereby Ordered that the trial date, August 23, 1956, heretofore set in the above matter, be va-

cated. The case is hereby set for trial September 5, 1956, at 9:30 a.m., before the Honorable Thurmond Clarke.

Dated this 31 day of July, 1956.

/s/ THURMOND CLARKE,
United States District Judge.

[Endorsed]: Filed July 31, 1956. [35]

[Title of District Court and Cause.]

WAIVER OF JURY

Comes now the defendant, A. J. Kahn, in person and by his attorney of record, Charles H. Carr, and represents that he desires to have this case tried before the Court and without a jury and requests of the Court that the case be so tried and hereby consents that the Court shall sit without a jury and hear and determine the charges against the defendant without a jury.

Dated: August 20, 1956.

/s/ A. J. KAHN,
Defendant. [36]

I have advised the defendant fully as to his rights and assure the Court that his request for a trial without a jury is understandingly made.

/s/ CHARLES H. CARR,
Attorney for Defendant.

The United States Attorney consents that the request of the defendant be granted and that the trial proceed without a jury.

/s/ LLOYD F. DUNN,
Assistant U. S. Attorney.

Approved:

/s/ THURMOND CLARKE,
United States District Judge.

[Endorsed]: Filed August 30, 1956. [37]

[Title of District Court and Cause.]

MINUTES OF THE COURT
SEPT. 5, 1956

Present: Thurmond Clarke, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: Lloyd F. Dunn.
Counsel for defendant: Chas E. Carr and Geo. Danielson.
Defendant present on bond.

Proceedings:
For trial. Jury is waived.

It Is Ordered that cause is transferred to Judge Byrne for non-jury trial, and that all witnesses report before Judge Byrne.

JOHN A. CHILDRESS,
Clerk. [38]

[Title of District Court and Cause.]

MINUTES OF THE COURT
SEPT. 5, 1956

Present: Wm. M. Byrne, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: Lloyd Dunn.
Counsel for defendant: Geo. Danielson and Chas. Carr for Def't Kahn.
Defendant present on bond.

Proceedings:

For trial. (Jury waived.) At 10:10 a.m. counsel for both sides and defendant are present. Court orders trial proceed.

Attorney Dunn opens argument to the Court for Gov't.

Attorney Carr opens argument to the Court in behalf of defendant.

Attorney Carr requests that witnesses be excluded from the courtroom and Court and counsel agree that certain witnesses not be present.

Hubert Jos. Ursich is called, sworn, and testifies for Gov't.

At request of Attorney Carr It Is Ordered that Witness Qualin is excluded from the courtroom during testimony of Witness Ursich.

At 11 a.m. court recesses. At 11:25 a.m. court reconvenes herein. Counsel for both sides and defendant are present. Court orders trial proceed.

Hubert Jos. Ursich resumes the stand.

At noon court recesses to 2 p.m. At 1:55 p.m.

court reconvenes herein. Counsel for both sides and defendant are present. Court orders trial proceed.

Hubert Jos. Ursich resumes the stand.

At 3:05 p.m. court recesses. At 3:20 p.m. court reconvenes herein. Counsel for both sides and defendant are present. Court orders trial proceed.

Eddie Qualin and John A. Martinolich, respectively, are called, sworn and testify for Gov't.

Counsel stipulate that a witness who could be called as a Gov't witness would show that the Gov't stamp for wagering tax for the period in question was not purchased by defendant.

Mary E. Gray is called, sworn, and testifies for Gov't.

At 4:15 p.m. It Is Ordered that cause is continued to Sept. 6, 1956, 9:45 a.m., for further trial.

JOHN A. CHILDRESS,
Clerk. [39]

[Title of District Court and Cause.]

MINUTES OF THE COURT
SEPT. 6, 1956

Present: Wm. M. Byrne, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: Lloyd F. Dunn.
Counsel for defendant: Chas. H. Carr and Geo. E. Danielson.
Defendant present on bond.

Proceedings:

For further Court trial. At 9:50 a.m. court convenes herein. All counsel and the defendant are present. Court orders trial proceed.

Albert Edward Zimmerman is called, sworn, and testifies for Gov't.

Gov't rests. Attorney Carr moves for acquittal on all five counts of the Information. Attorney Dunn, for Gov't, argues to the Court in opposition to said motion. Court Orders said motion of defendant for acquittal on all five counts Denied.

John M. Athaide is called, sworn, and testifies for defendant.

Deft's Exs. A and B are marked for ident. and admitted into evidence.

James Calkins, Robert Thornton, and Andre E. Anderson, respectively, are called, sworn, and testify for defendant.

Gov't Exs. 34 and 30 are admitted into evidence.

At 11:25 a.m. court recesses. At 11:40 a.m. court reconvenes herein, and all being present as before, including defendant and counsel for both sides, Court orders trial proceed.

Percy Ellis Welch, Julius Kahn, and Irvin J. Kahn, respectively, are called, sworn, and testify for defendant.

At noon court recesses to 2 p.m. At 2 p.m. court reconvenes herein, and all being present as before, including defendant and counsel for both sides, Court orders trial proceed.

Ann Marcos, Kay Marcos, Lois V. Kelly, Yale

Kahn (nephew), and Yale Kahn (son), respectively, are called, sworn, and testify for defendant.

At 3 p.m. court recesses. At 3:10 p.m. court reconvenes herein, and all being present as before, including defendant and counsel for both sides, Court orders trial proceed.

A. J. Kahn, defendant, is called, sworn, and testifies in his own behalf. Defendant rests.

Attorney Carr moves for dismissal or acquittal on all five counts of the Information. Court Orders said motion Denied.

Porter Chase is called, sworn, and testifies for Gov't.

Gov't Ex. 35 is marked for ident. and admitted into evidence.

Gov't Ex. 36 is marked for ident. only.

Attorney Dunn makes opening argument to the Court for Gov't.

Attorney Carr argues to the Court on behalf of defendant.

At 4:50 p.m. It Is Ordered that cause is continued to 9:45 a.m., Sept. 7, 1956, for further trial.

JOHN A. CHILDRESS,
Clerk. [40]

[Title of District Court and Cause.]

MINUTES OF THE COURT
SEPT. 7, 1956

Present: Wm. M. Byrne, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: Lloyd Dunn.
Counsel for defendant: Chas. H. Carr and Geo. E. Danielson.
Defendant present on bond.

Proceedings:

For further Court trial. At 9:50 a.m. court convenes herein, and defendant and counsel for both sides being present, Court orders trial proceed.

Counsel stipulate that the vessel "St. Francis" and its skipper, Hubert Ursich, left port and returned on certain dates.

Defendant rests.

Attorney Dunn makes a statement to the Court re further witnesses.

Julius Joseph DeKeyser is called, sworn, and testifies for Gov't.

Attorney Carr argues further to the Court.

Attorney Dunn closes argument in behalf of Gov't.

Attorney Carr requests that the Court consult Rule 23 F.R.Cr.P. before finding is made, and Court concurs.

Court Finds defendant guilty to counts 1, 2, 4, and 5, and not guilty to count 3 of the Information, and Orders cause referred to Probation Officer for

investigation and report and continued to Oct. 1, 1956, 2 p.m., for hearing report of Probation Officer and sentence on counts 1, 2, 4, and 5, and for disposition of count 3 of the Information; defendant to remain on present bond.

JOHN A. CHILDRESS,
Clerk. [41]

[Title of District Court and Cause.]

SPECIAL FINDINGS OF FACT
[Under F.R.C.P. 23c]

In accordance with the provisions of Rule 23c, Federal Rules of Criminal Procedure, and pursuant to the request of defendant A. J. Kahn, the court makes the following general and special findings of fact:

I.

During the tax year beginning July 1, 1953, and ending June 30, 1954, the defendant A. J. Kahn engaged in the business of accepting wagers on horse races in San Diego County, California.

II.

Defendant A. J. Kahn knew on July 1, 1953, and at all subsequent times that he was required by Section 3290, Internal Revenue Code, (1939), to pay the occupational tax, wagering, to the District Director of Internal Revenue at Los Angeles, California, within the Central Division of the Southern District of California. [42]

III.

Defendant A. J. Kahn wilfully failed to pay said occupational tax to the said District Director or to any other proper officer of the United States in 1953, or at any other pertinent time.

IV.

During the month of September, 1953, the defendant A. J. Kahn accepted wagers on horse races in the total amount of $1,970.00 in San Diego, California, upon which there was an excise tax, wagering, due in the sum of $197.00 on or before October 31, 1953.

V.

During the month of December, 1953, defendant A. J. Kahn accepted wagers on horse races in the total amount of $1,350.00 in San Diego, California, upon which there was an excise tax due in the sum of $135.00 on or before January 31, 1954.

VI.

During the month of March, 1954, defendant A. J. Kahn accepted wagers on horse races in the total amount of $3,610.00 in San Diego, California, upon which there was an excise tax, wagering, due in the sum of $361.00 on or before April 30, 1954.

VII.

On March 26 and 27, 1954, defendant A. J. Kahn authorized and directed Albert E. Zimmerman to accept wagers on his, defendant's, behalf from Hubert Ursich in San Diego County, California.

VIII

On July 1, 1953, and at all subsequent times, defendant A. J. Kahn knew that he was required by Sec. 3285, Internal Revenue Code (1939), to pay to the District Director of Internal Revenue, Los Angeles, California, within the Central Division of the Southern District of California, the ten per cent excise tax on wagers, on or before the end of the months following which he had accepted [43] wagers.

IX.

Defendant A. J. Kahn wilfully failed to pay the excise taxes on wagers to the said District Director of Internal Revenue or to any other proper officer of the United States, during October, 1953, January and April, 1954, or at any other pertinent time.

X.

The Court finds the defendant A. J. Kahn guilty as to Counts I, II, IV and V of the Information in the above-entitled cause, and not guilty as to Count III of said Information.

Dated this 20 day of September, 1956.

/s/ WM. M. BYRNE,
United States District Judge.

Prepared by:

/s/ LLOYD F. DUNN,
Assistant U. S. Attorney, Asst. Chief, Criminal Division.

[Endorsed]: Filed September 20, 1956. [44]

[Title of District Court and Cause.]

MINUTES OF THE COURT
OCT. 1, 1956

Present: Wm. M. Byrne, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: Robert J. Jensen.
Counsel for defendant: Chas. H. Carr and George E. Danielson.
Defendant present on bond.
Walter Evans, Probation Officer.

Proceedings:

For sentence.

Attorney Jensen makes a statement re absence of Attorney Lloyd F. Dunn, Ass't U. S. Att'y.

Attorney Carr makes a formal statement to the Court in behalf of defendant.

Attorney Jensen makes a statement in behalf of Gov't.

It Is Adjudged that defendant pay a fine unto U. S. A. in the sum of $10,000 on Count One of the Information, and defendant is committed to the custody of the Attorney General or his authorized representative for a period of one year on each of Counts 2, 4 and 5 of the Information to run concurrently, and the Court Suspends execution of said sentence of imprisonment on Counts 2, 4 and 5 and places defendant on probation for a period of three years on Counts 2, 4 and 5, on condition he pay

said fine assessed on Count One on, or before, Dec. 1, 1956, and on the further condition that defendant does not violate any law, Federal, State, or Municipal, that he complies with all lawful rules and regulations of the Probation Officer; and

It Is Adjudged that a stay of execution on payment of fine assessed on Count One of Information is granted to, and including, Dec. 1, 1956, 5 p.m.

JOHN A. CHILDRESS,
Clerk. [46]

United States District Court for the Southern District of California, Central Division

No. 24,572-Criminal

UNITED STATES OF AMERICA

vs.

A. J. KAHN

JUDGMENT AND COMMITMENT

On this 1st day of October, 1956, came the attorney for the government and the defendant appeared in person by his counsel, Charles H. Carr, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty to Counts 1, 2, 3, 4 & 5 and Finding of Guilty on Cts 1, 2, 4 & 5 of the offenses of Failure to pay occupational and ex-

cise taxes on wagers, in violation of I.R.C. (1939), Secs. 2707(b), 3285, 3287, 3290, and 3294(c) as charged in the Information and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the U. S. A. in the sum of $10,000 on Count 1 of the Information, and defendant is committed to the custody of the Attorney General or his authorized representative for a period of 1 year on each of Counts 2, 4 & 5, to run concurrently, execution suspended, probation granted for a period of 3 years on condition defendant pays fine assessed on Count 1 on or before Dec. 1, 1956. Further condition of probation that defendant does not violate any law, Federal, State or Municipal, that he complies with all lawful rules, regulations of the probation office.

It Is Adjudged That a stay of execution on payment of fine assessed on Count 1 of the Information be granted to and including December 1, 1956, at 5:00 p.m.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and

that the copy serve as the commitment of the defendant.

/s/ WM. M. BYRNE,
United States District Judge.

JOHN A. CHILDRESS,
Clerk.

[Endorsed]: Filed October 1, 1956. [47]

[Title of District Court and Cause.]

NOTICE OF APPEAL OF DEFENDANT, A. J. KAHN

1. Name and address of appellant: A. J. Kahn, 3364 Sixth Avenue, San Diego, California.

2. Name and address of appellant's attorneys: Charles H. Carr and George E. Danielson, 403 Subway Terminal Building, Los Angeles 13, California.

3. Offense:

Count One

Failure to pay the occupation tax on wagers imposed by Section 3290, Title 26, United States Code (Internal Revenue Code of 1939).

Count Two

Failure to pay the excise tax on wagers imposed by [48] Section 3285, Title 26, United States Code (Internal Revenue Code of 1939).

Count Four

Failure to pay the excise tax on wagers imposed by Section 3285, Title 26, United States Code (Internal Revenue Code of 1939).

Count Five

Failure to pay the excise tax on wagers imposed by Section 3285, Title 26, United States Code (Internal Revenue Code of 1939).

On September 7th, 1956, the above Court found defendant, A. J. Kahn, guilty of Counts One, Two, Four and Five of the Information. On October 1st, 1956, the Court sentenced defendant, A. J. Kahn, to pay a fine of $10,000.00 for the offense charged in Count One of the Information, and sentenced the defendant to stand committed into the custody of the Attorney General for a period of one year on each of Counts Two, Four and Five of the Information, the sentences on said Counts Two, Four and Five to run concurrently. Execution of the sentences on Counts Two, Four and Five was suspended and the defendant was placed on probation for three years, on the condition that he obey all laws and pay the fine imposed on Count One on or before December 1st, 1956. Execution of the sentence on Count One was suspended until December 1st, 1956.

5. Name of institution where confined, if not on bail: Not confined.

The above-named appellant, A. J. Kahn, does

hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above judgment.

Dated: October 9th, 1956.

CHARLES H. CARR and
GEORGE E. DANIELSON,

By /s/ GEORGE E. DANIELSON,
Attorneys for Appellant.

[Endorsed]: Filed October 9, 1956. [49]

[Title of District Court and Cause.]

STATEMENT OF DOCKET ENTRIES

1. Information for viol. of IRC (1939)—2707 (b), 3285, 3287, 3290 & 3294—Failure to pay occupational tax on wagers. Filed November 17, 1955.
2. Arraignment. November 17, 1955.
3. Plea to information Not Guilty. November 17, 1955.

* * *

5. Trial by court. September 5, 6 & 7, 1956.
6. Finding of Guilty Cts. 1, 2, 4 & 5. September 7, 1956.
7. Judgment: $10,000 fine Ct. 1; 1 yr. on ea. Cts. 2, 4 & 5 to run concurr; exec sent Cts 2, 4 & 5 suspended, 3 yrs prob. Entered October 1, 1956.
8. Notice of appeal filed October 9, 1956.

Dated November 10, 1956.

Attest

JOHN A. CHILDRESS,
Clerk.

By JOHN F. MAHER,
Deputy Clerk. [50]

[Title of District Court and Cause.]

APPLICATION FOR ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING APPEAL AND ORDER THEREON

(Rule 73(g), F.R.C.P.)

Comes Now the defendant-appellant and respectfully requests the Court to make and enter its Order extending the time in which the appellant may designate the contents of the record on appeal, and extending the time for filing the record on appeal and docketing the appeal, in the above cause. Notice of appeal was filed on October 9th, 1956; no extensions have previously been requested or made.

This request is made for the reasons, among others, that the attorney who is preparing the appeal for the appellant is presently engaged in a trial which, it is estimated, will continue for an additional two weeks, and he has a heavy trial calendar presently scheduled during the balance of 1956. A Reporter's Transcript of all the proceedings in the trial in the above case has been ordered, but the court reporter who reported the trial is presently

engaged in reporting a trial in which a daily [51] transcript is being prepared, and, in addition, he has other transcripts of records to prepare in other appeals which have been noticed, and he presently estimates that he will require from three to four weeks to prepare a transcript of proceedings in the trial of this case.

Under the provisions of Rule 73(g), Federal Rules of Civil Procedure, this Court may, in its discretion, with or without motion or notice, grant the requested extension to a day not more than 90 days from the date of filing the first Notice of Appeal. The requested extension of time is to a day less than 90 days from the date of filing the first Notice of Appeal.

Wherefore, appellant respectfully moves the Court to make and enter its Order, pursuant to Rule 73(g), Federal Rules of Civil Procedure, extending the time for filing the record on appeal and docketing the appeal for 47 days, to and including Friday, January 4th, 1957.

Dated this 29th day of October, 1956.

CHARLES H. CARR and
GEORGE E. DANIELSON,

By /s/ GEORGE E. DANIELSON.

Presented by:

/s/ GEORGE E. DANIELSON.

Order Extending Time for Filing Record on Appeal and Docketing Appeal

On considering the application of the appellant for an Order extending the time within which to file the record on appeal and docket the appeal, and good cause appearing,

It Is Hereby Ordered that the time within which to file the record on appeal and docket the appeal in the above-entitled cause be, and the same is hereby, extended to and including Friday, the 4th day of January, 1957.

Dated: October 29, 1956.

/s/ WM. M. BYRNE,
United States District Judge.

[Endorsed]: Filed October 29, 1956. [52]

[Title of District Court and Cause.]

MINUTES OF THE COURT
NOV. 26, 1956

Present: Wm. M. Byrne, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: Lloyd F. Dunn.
Counsel for defendant: Geo. E. Danielson.
Defendant not present.

Proceedings:

For hearing motion of defendant for order staying sentence of payment of fine pending appeal and specifying terms therefor.

Attorney Danielson argues to the Court and offers to post bond in the amount of fine and counsel for Gov't agrees that bond be posted.

Court Orders that money be deposited in the registry of the Court in cash or a bond in the same amount.

Attorney Danielson to prepare order.

JOHN A. CHILDRESS,
Clerk. [59]

[Title of District Court and Cause.]

ORDER STAYING SENTENCE OF PAYMENT OF FINE PENDING APPEAL AND SPECIFYING TERMS THEREFOR

The above matter came on for hearing on November 26th, 1956, before the Honorable Wm. F. Byrne, United States District Judge, on motion of the defendant for Order Staying Sentence of Payment of Fine Pending Appeal and Specifying the Terms Therefor, the plaintiff appearing by Lloyd F. Dunn, Assistant United States Attorney, and the defendant appearing by Charles H. Carr and George E. Danielson, by George E. Danielson, his attorneys, and the Court having been fully apprised in the premises and having fully considered the matter,

It Is Ordered, Adjudged, and Decreed that the portion of the judgment and sentence of this Court which sentenced the defendant, A. J. Kahn, to pay a fine of $10,000.00 to the United States of America

on or before December 1st, 1956, be, and the same hereby is, stayed pending appeal, on condition that, on or before December 1st, 1956, said defendant comply with either of the [60] following:

(1) Deposit the whole of said fine in the registry of this Court, or

(2) Give and file with the Clerk of this Court a sufficient bond to secure payment of said fine on conclusion of the proceedings in appeal in this cause.

/s/ WM. M. BYRNE,
District Court Judge.

Dated: November 28, 1956.

Lodged November 27, 1956.

[Endorsed]: Filed November 28, 1956. [61]

[Title of District Court and Cause.]

NOTICE OF GIVING BOND FOR PAYMENT OF FINE

To the United States of America, Plaintiff, and to Laughlin E. Waters, United States Attorney for the Southern District of California, Attorney for Plaintiff:

Please Take Notice that on November 29, 1956, the defendant A. J. Kahn filed with the Clerk of this Court his bond for the payment of the fine heretofore imposed by the Court in this action. Said bond was given pursuant to the Order of this Court

made on Monday, November 26, 1956, and filed on November 28, 1956.

Dated: November 30, 1956.

CHARLES H. CARR and
GEORGE E. DANIELSON,

By /s/ GEORGE E. DANIELSON,
Attorneys for Defendant.

[Endorsed]: Filed November 30, 1956. [62]

In the United States District Court, Southern District of California, Central Division

No. 24572-CD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. J. KAHN,

Defendant.

Honorable William M. Byrne, Judge Presiding.

REPORTER'S TRANSCRIPT
OF PROCEEDINGS

Appearances:

Attorneys for Plaintiff:
LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant United States Attorney,
Chief, Criminal Division;
LLOYD F. DUNN,
Assistant United States Attorney,
Assistant Chief, Criminal Division;
By LLOYD F. DUNN,
Assistant United States Attorney.

Attorneys for Defendant:
CHARLES H. CARR,
GEORGE E. DANIELSON.

Wednesday, September 5, 1956, 10:00 A.M.

The Court: The Clerk will call the calendar.

The Clerk: No. 24572-Criminal, United States of America versus A. J. Kahn, for trial.

Mr. Dunn: The Government is ready, your Honor.

Mr. Carr: The Defendant is here, and we are ready, your Honor, and he is represented by Mr. George Danielson and myself.

The Court: The Defendant has filed a written waiver of a jury.

Mr. Carr: Yes, we filed that, your Honor, and I believe it has been signed by the Government. I don't know whether it has been signed by the Court or not.

Mr. Dunn: That is correct. The Government has signed it, your Honor, and I believe it was signed by Judge Clarke.

Mr. Danielson: Well, I believe it has been, your

Honor. He was not in chambers at the time. It was left with the Deputy Clerk of the Court and I assume we would have been notified if it had not been approved by the Court. It has been filed.

The Court: Very well. You may proceed.

Mr. Dunn: May I make an opening statement, your Honor?

The Court: Yes.

(Opening statement on behalf of the Plaintiff, by Mr. [7*] Dunn.)

(Opening statement on behalf of Defendant, by Mr. Carr.) [8]

The Court: All right, you may proceed.

Mr. Dunn: Mr. Ursich, please.

Mr. Carr: May we ask, your Honor, I think perhaps it would be wise if the witnesses be excluded from the courtroom.

The Court: Well, not unless you show that there would be a real prejudice by their remaining in the courtroom. It slows up the trial, it wastes so much time trying to get the witnesses from outside.

Mr. Carr: Well, there are two of them here, Mr. Qualin and Mr. Ursich, who are principals in this case. If you will separate them, I will be satisfied.

The Court: I assume insofar as both of these witnesses are concerned, from the opening statements that have been made here, the transactions will all be separate transactions. I don't think they all went there at one time. The prosecution says

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

they are going to show where they made bets. I don't imagine they all went at one time to the defendant to make bets.

Mr. Carr: But, your Honor, may I interrupt. Qualin and Ursich were together in some alleged transactions, and I don't think one ought to sit here and listen to the other's testimony. I think we ought to have the other one excluded. Then I will be satisfied.

The Court: Who will be your first witness? [9]

Mr. Dunn: Ursich.

The Court: You say Qualin and Ursich?

Mr. Carr: Qualin and Ursich. If you will excuse Mr. Qualin while Mr. Ursich testifies——

Mr. Dunn: I may say, Mr. Qualin has not arrived yet.

Mr. Carr: Then we are satisfied, as long as he is not here.

The Court: Then, he is not present in the courtroom?

Mr. Dunn: He is not present in the courtroom at this time.

The Court: All right.

(And thereupon, the plaintiff, to maintain the issues in its behlaf, offered and introduced the following evidence, to wit:)

HUBERT JOSEPH URSICH

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Give us your full name, please.

A. Hubert Joseph Ursich.

Mr. Dunn: Your Honor, I have previously shown these checks to counsel. I just wanted him to have a look at them and I will have them marked.

The Court: All right. [10]

Direct Examination

By Mr. Dunn:

Q. Where do you reside, Mr. Ursich?

A. San Diego.

Q. What is your business or occupation?

A. I am a fishing boat owner and a captain of a tuna boat.

Q. Do you know the defendant, A. J. Kahn?

A. Yes, sir.

Q. Do you see him here in the courtroom?

A. Yes, sir.

Q. And will you point him out to the Court, please? A. He is there (indicating).

Mr. Carr: Stand up, Mr. Kahn.

Mr. Dunn: May it be stipulated that the defendant has been identified?

Mr. Carr: It is so stipulated.

Mr. Dunn: Thank you.

Q. When did you first meet Mr. Kahn, the defendant?

A. Oh, I would say about eight years ago.

(Testimony of Hubert Joseph Ursich.)

Q. And where was that?

A. At his place of business.

Q. Where? A. Club Royal.

Q. And that is located where? [11]

A. San Diego.

Mr. Carr: Move to strike the answer, "at his place of business," on the ground that there is no foundation laid to show that Mr. Kahn is the owner of that place of business.

The Court: "His place of business" may go out.

Q. (By Mr. Dunn): And where was it that you met him, then? A. At the Club Royal.

Q. And that is where, can you tell us where it is?

A. On 3rd Street in downtown San Diego, 3rd and C Street.

Q. Now, then, have you on any occasion placed bets or sporting bets with the defendant Kahn?

A. Yes, sir, I have.

Q. When was the first such occasion?

A. Oh, I don't recollect the exact date, but it would be five or six years ago.

Mr. Carr: We object to any testimony about five or six years ago, your Honor, on the ground that the crime alleged in the information was in 1953, and I don't see how this would be relevant.

The Court: The objection is overruled, but that, of course, does not mean that they may go into any detail as to any bets, so you may renew your ob-

(Testimony of Hubert Joseph Ursich.)

jection. [12] He may answer that particular question.

Mr. Dunn: Thank you, your Honor.

May I ask that the Clerk start marking a series of checks which I am going to present as Government's Exhibits for identification. I have a series which I would like to start with, so that when I begin questioning, they will be marked.

Q. At the time that you first engaged in a bet with Mr. Kahn, was that preceded by a conversation?

Mr. Carr: This is all objected to on the grounds that it is far prior to the indictment, your Honor.

The Court: The objection is sustained.

Mr. Dunn: Well, if the Court please, I would like to say this: This, of course, is a course of dealings that went over a period of time. Now, at the inception, your Honor, the Government is going to offer to prove by this witness that the defendant solicited his betting, at the beginning, and that for a period of time they continued to do business, and then, of course, I am going to show the specific bets in the specific years, but that, I believe, is quite important on the question of their relationship.

The Court: Well, I suggest that you first produce evidence or testimony as to whether or not he made any bets during the period in question, and then you can go back to any conversation. [13]

Mr. Dunn: All right, your Honor, I will be glad to do that.

The Court: Preceding the betting.

(Testimony of Hubert Joseph Ursich.)

Mr. Dunn: I thought perhaps because we don't have a jury we might take it chronologically.

Q. Did you during the period of July 1, 1953, to June 30, 1954, engage in bets with Mr. Kahn?

A. Yes, sir.

Q. And how did you place those bets as the normal custom? A. I would place them——

Mr. Carr: I can't hear the witness.

The Court: Keep your voice up.

The Witness: I would bet on a certain horse and he would book it.

Q. (By Mr. Dunn): Well, where did you place the bets during that period?

A. At his office at the Club.

Q. And you are identifying what Club?

A. The Club Royal.

Q. Describe the office that you speak of, where was that located in the Club?

A. In the back room of the bar, behind the bar, there was an office with a desk and couch and a safe and regular office paraphernalia. [14]

Q. And where did you see Mr. Kahn on the occasions that you went to the Club Royal?

A. Usually in the office.

Q. Was anyone else in that office at that time?

A. Sometimes there would be and sometimes not.

Q. Where would Mr. Kahn be in the office?

A. At the desk.

Q. So, then, when you were ready to place a bet, what action did you take?

A. Just in a matter of conversation, I would say

(Testimony of Hubert Joseph Ursich.)

I would like to bet such and such a horse for so much money, and that was all.

Q. And you did that when you first went into the office, did you? A. Naturally, yes.

Q. And were these bets made in cash or by check? A. Both.

Q. And I will now show you Government's Exhibit No. 1 for identification.

Mr. Carr: May I see those as you hand them up, please, counsel?

Q. (By Mr. Dunn): I place Government's Exhibit No. 1 for identification before you, Mr. Ursich, and ask you whether or not that is your check?

A. That is my check. [15]

Q. Now, I notice that this check is made out to "Cash" and that it bears an endorsement on the back "A. J. Kahn." Do you recognize the endorsement? A. Yes.

Q. And whose endorsement is that?

A. Mr. Kahn's.

Q. And you are referring to the defendant in this case? A. Yes, sir.

Q. Now, this check is dated September 4, 1953, or appears to be. Do you know what the purpose of that check was? A. A bet on a horse.

Q. Now, was this check given at the time you placed the bet or at some other time?

A. Undoubtedly it was given at the time I placed the bet.

Q. And was that always your practice?

A. No.

(Testimony of Hubert Joseph Ursich.)

Q. Or did you pay it at the time you made the bet? A. Not always.

Q. What happened at a time when you didn't pay it at the time when you made the bet?

A. Why, I would usually pay at the end of the day or the next day. [16]

Q. Was this Government's Exhibit No. 1 for identification later charged to your bank account?

A. Yes, sir.

Q. Now, I show you Government's Exhibit No. 2 for identification and ask you whether or not that is your check? A. Yes, sir.

Q. And again referring to the endorsement on the back, I observe that it bears the endorsement "A. J. Kahn." Do you know whose endorsement that is? A. Mr. Kahn's.

Mr. Carr: May I interrupt. Do those checks only bear A. J. Kahn's endorsements?

Mr. Dunn: No, I am not purporting to read all of the checks.

Mr. Carr: Well, I think the Court isn't getting a very fair impression by that.

Mr. Dunn: Well, if the Court wishes, I will be glad to hand the checks up to your Honor.

The Court: I will look them over a little later. You mean there is more than one endorsement?

Mr. Carr: Yes, there is.

Mr. Dunn: Yes, there is a subsequent endorsement. I don't mean to be unfair.

Mr. Carr: I don't mean that intentionally. [17]

(Testimony of Hubert Joseph Ursich.)

Mr. Dunn: It bears the further endorsement of "A. E. Anderson," but I wanted him to identify the first endorsement.

The Court: You may go ahead.

Mr. Dunn: Thank you, your Honor.

Q. Now, then, you identified the first endorsement as being that of A. J. Kahn on Government's Exhibit No. 2 for identification? A. Yes, sir.

Q. And for what purpose was that check made?

A. A horse race bet.

The Court: Keep your voice up.

Mr. Dunn: Remember that counsel, the defendant, and the Judge all want to hear everything you say.

Q. Now, you say that was for a horse race bet?

A. Yes.

Q. Was the bet placed on or before the date which the check bears? A. Yes, sir.

Q. And was this check again paid in the regular course of operation by your bank?

A. Yes.

Q. And charged to your account?

A. Yes, sir.

Q. I now show you Government's Exhibit No. 3 for [18] identification, purporting to be a check of Hubert Ursich and ask you whether or not that is your signature? A. Yes, sir.

Q. And again, the check bears an endorsement of "A. J. Kahn." Is that the signature of the defendant Mr Kahn? A. Yes, sir.

(Testimony of Hubert Joseph Ursich.)

Q. And was this check regularly charged to your account? A. Yes, sir.

Q. For what purpose did you issue this check?

A. A horse race bet.

Q. And was that bet on or about the date that the check bears? A. Yes, sir.

Q. And with whom were the bets placed which you have stated were made with reference to Government's Exhibits 1, 2, and 3 for identification?

A. With A. J. Kahn.

Q. Referring to the defendant here?

A. Yes, sir.

Q. Now, I will show you Government's Exhibit 4 for identification and ask you whether or not that is your check? A. Yes, sir.

Q. And was it issued on or about the date which it [19] bears? A. Yes, sir.

Q. That is, September 22, 1953.

Mr. Carr: What was that amount, please?

Mr. Dunn: That is in the sum of $400.00.

Q. Now, for what purpose was that check issued? A. Horse race bet.

Q. And again the endorsement is "A. J. Kahn." Is that the defendant in this case?

A. Yes, sir.

Q. Did you place your bet with the defendant?

A. Yes, sir.

Q. And did you place it on or about the date which the check bears? A. Yes, sir.

Q. Now, was this check regularly charged to your account? A. Yes.

(Testimony of Hubert Joseph Ursich.)

Q. Now, I show you Government's Exhibit 5 for identification and again ask you whether or not this is your check? A. Yes.

Q. And for what purpose was Government's Exhibit 5 for identification issued?

Mr. Carr: We will object to any testimony concerning [20] this Exhibit No. 5, on the ground that it shows on the back that it was endorsed by Yale Kahn, and no connection with the defendant whatsoever.

Mr. Dunn: Well, I am attempting to connect it up with this defendant, your Honor.

The Court: The objection is overruled.

Q. (By Mr. Dunn): The question is what the purpose of Government's Exhibit 5 for identification was? A. This check?

Q. Yes. A horse race bet.

Q. With whom did you place that bet?

A. A. J. Kahn.

Q. And did you place it on or about the date which the check bears? A. Yes, sir.

Q. Then, what did you do with Government's Exhibit 5 for identification? What did you do with it after you made it out?

A. Gave it to Mr. Kahn.

Q. To the defendant Kahn?

A. Yes, sir.

Q. Now, I show you the endorsement on the back which bears the written "Club Royal Yale Kahn"; do you recognize that signature? [21]

A. Yes, sir.

(Testimony of Hubert Joseph Ursich.)

Q. And who is the "Yale Kahn," if you know?

A. He is the nephew of Mr. Kahn.

Q. And was this check regularly charged to your account? A. Yes, sir.

Mr. Dunn: Now, I show you Government's Exhibit 6 for identification. I wonder, now, if it may be possible to shorten up the questioning in this way: I am going to offer those marked and then we will see whether or not we can enter into a stipulation. I understand the witness will testify the same as to this check which bears the same endorsement.

Mr. Carr: You are referring to which exhibit?

Mr. Dunn: To Exhibit No. 6, and then No. 7, each of which is endorsed in the same way as Exhibit No. 5.

Mr. Carr: Your Honor, we can shorten it by my objection on the same ground, it shows it was endorsed by Yale Kahn and no connection with the defendant.

The Court: Well, they will not be admitted. You say, "no connection with the defendant." You make two different statements. It doesn't make any difference. If it is endorsed by Yale Kahn and if there is no connection with the defendant by Yale Kahn, then, of course, it is not admissible. If it was endorsed by Yale Kahn and there is [22] evidence that that bet was made with the defendant Kahn and the check was given to defendant Kahn, then, of course, it is admissible.

Mr. Carr: That is the reason I can't stipulate.

(Testimony of Hubert Joseph Ursich.)

Mr. Dunn: I didn't want to become monotonous, your Honor, that is all.

Q. Showing you Government's Exhibit No. 6 for identification, I ask you whether or not that is your check? A. Yes, sir.

Q. And for what purpose did you issue Government's Exhibit No. 6 for identification?

A. A horse race bet.

Q. And with whom did you place that bet?

A. A. J. Kahn.

Q. And to whom did you hand the check?

The Court: A. J. Kahn, the defendant?

A. Yes.

Q. (By Mr. Dunn): To whom did you hand the check? A. To Mr. Kahn, A. J. Kahn.

Q. And did you do that on or about the date which it bears? A. Yes, sir.

Q. Was this check regularly charged to your account? A. Yes, sir.

Q. I now show you Government's Exhibit No. 7 for [23] identification and ask you whether or not that is your check? A. Yes, sir.

Q. And for what purpose did you issue Government's Exhibit No. 7 for identification?

A. A horse race bet.

Q. To whom did you hand Government's Exhibit No. 7 for identification?

A. A. J. Kahn.

Q. And what was the purpose? Have I asked you what the purpose of that was? A. Yes.

Q. I am sorry; was this regularly charged to

(Testimony of Hubert Joseph Ursich.)

your account? A. Yes.

Q. I now show you Government's Exhibit No. 8 for identification. Is that your check?

A. Yes.

Q. And for what purpose did you issue that check? A. Horse race bet.

Q. Was this alteration which appears on the face of the check in which appears the Branch Office is stricken out and another one written in placed on the check at the time you issued it?

A. No. That is not my writing.

Q. Did you have an account with the Pacific Beach [24] Office at that time? A. No, sir.

Q. Your account was at 2nd and Broadway?

A. Yes.

Q. Do you know who made the alteration on that check? A. No, sir.

Q. But at any rate you had your account at the 2nd and Broadway Branch? A. Yes.

Q. And this check was regularly charged to your account? A. Yes.

Q. And for what purpose did you issue that check? A. Horse race bet.

Q. And to whom did you deliver the check?

A. A. J. Kahn.

Q. And with whom did you place that bet?

A. A. J. Kahn.

Q. And again I notice that the endorsement is "Club Roya' Yale Kahn." Is that the same Yale Kahn that you previously identified?

A. The nephew of A. J. Kahn, yes, sir.

(Testimony of Hubert Joseph Ursich.)

Q. Now, I show you Government's Exhibit No. 9 for identification purporting to be a counter check against the U. S. National Bank and ask you whether or not that is [25] your check?

A. Yes. That is my check.

Q. And for what purpose did you issue that check? A. Horse race bet.

Q. And with whom was that bet made?

A. A. J. Kahn.

Q. And was it made on or about the date that the check bears? A. Yes, sir.

Q. And was this check regularly charged to your account? A. Yes, sir.

Q. And did you say to whom you delivered the check? A. A. J. Kahn.

Q. Now, I call your attention to the fact that there appears the endorsement "John H. Willson" or something similar to that. Do you know the person who placed that endorsement on the check?

A. Yes, sir.

Q. And who is he? A. He is a man— —

Mr. Carr: I object to any testimony as to who he is, unless he says he identifies his writing. He hasn't testified that he identifies his endorsement, as I understand it. [26]

The Court: I understood that he did identify him.

Mr. Dunn: He said he knew the person.

Mr. Carr: He said he knew the person.

Mr. Dunn: Well, I am asking who he is.

(Testimony of Hubert Joseph Ursich.)

Mr. Carr: Well, that is an indirect way of getting in the endorsement, it seems to me.

The Court: The objection is overruled.

Mr. Dunn: You may answer the question.

A. I do know the person. He is a man that resides at San Diego.

Q. (By Mr. Dunn): And does the fact that this John H. Willson's signature appears on this check change your testimony that you gave this check to Mr. Kahn? A. No, sir.

Q. Now, I show you Government's Exhibit No. 10 for identification and ask you whether or not this is your check? A. Yes, sir.

Q. And to whom did you deliver that check after you made it? A. A. J. Kahn.

Q. And for what purpose did you give it to him?

A. Horse race bet.

Q. And was that on or about the date of this check? A. Yes, sir.

Q. I call your attention to the fact that the [27] endorsement appearing on the back is "Kay Marcos." Do you know Kay Marcos?

A. Yes, sir.

Q. And who is Kay Marcos?

A. She is a woman that resides in San Diego.

Mr. Carr: Your Honor, may we ask that Mr. Qualin, who is now in the courtroom, be excluded, please?

The Court: Very well.

Mr. Dunn: Mr. Qualin, the bailiff will show you where to wait, pending your testimony. He is just

(Testimony of Hubert Joseph Ursich.)

going to take you there. You will go with the bailiff to the witness room, please.

Q. Was this Government's Exhibit No. 10 for identification regularly charged to your bank account? A. Yes.

Q. Now, I show you Government's Exhibit No. 11 for identification, Mr. Ursich, and ask you whether or not that is your check?

A. Yes, sir.

Q. And to whom did you give that check?

A. A. J. Kahn.

Q. And what was the purpose of this check, Exhibit No. 11 for identification?

A. A horse race bet.

Q. And was the bet made on or about the date which the [28] check bears? A. Yes, sir.

Q. Was that check regularly charged to your account? A. Yes, sir.

Q. Now, I call your attention to the fact that the name "Eleanor Kahn" appears on the back of that check. Nevertheless, did you deliver that check to Mr. A. J. Kahn, the defendant? A. Yes.

Q. And do you know Eleanor Kahn?

A. No, sir.

Q. I call your attention to Government's Exhibit No. 12 for identification and ask you whether or not that is your check? A. Yes, sir.

Q. And for what purpose did you issue that check? A. A horse race bet.

Q. And with whom did you place that bet?

A. A. J. Kahn.

(Testimony of Hubert Joseph Ursich.)

Q. And to whom did you deliver it?

A. A. J. Kahn.

Q. And was the bet made on or about the date December 11, 1953, which this check bears?

A. Yes, sir.

Q. I call your attention to the endorsement "Club [29] Royal Yale Kahn" and ask you whether or not that is the same Yale Kahn that you have previously identified? A. I believe so.

Mr. Carr: I object to that question. Here there are two Yale Kahns and he has not testified to the endorsement.

The Court: He has up to this time, he has testified before that he was familiar with the endorsement of Yale Kahn, the nephew of this defendant.

Mr. Carr: But he did not testify on this check.

The Court: On this one he did not testify as to that.

Mr. Dunn: Well, I merely asked him whether or not that was the same as the one he had previously identified.

The Court: Ask him if he is familiar with the signature of this Yale Kahn.

Mr. Dunn: Well, I will go through that again, your Honor.

Q. Are you familiar with the signature of Yale Kahn, the nephew of A. J. Kahn? A. Yes

Q. And do you see that signature on the endorsement side of Government's Exhibit No. 12 for identification? A. Yes.

Q. And that is the same Yale Kahn that you

(Testimony of Hubert Joseph Ursich.)

previously identified? A. Yes. [30]

Q. And I am not sure if I asked, was Government's Exhibit No. 12 for identification regularly charged against your account? A. Yes.

Q. Mr. Ursich, I show you Government's Exhibit No. 13 for identification and ask you whether or not that is your check? A. Yes.

Q. And to whom did you give Government's Exhibit No. 13 for identification?

A. A. J. Kahn.

Q. And did you do that on or about the date which the check bears? A. Yes, sir.

Q. For what purpose did you give him the check? A. A horse race bet.

Q. And was that bet placed on or about the date which the check bears? A. Yes.

Q. Again calling your attention to the endorsement, "Club Royal Yale Kahn," is your testimony the same as to previous endorsements of that nature? A. Yes.

Q. Now, I show you Government's Exhibit No. 14 for identification and ask you whether or not that was your [31] check? A. Yes.

Q. And for what purpose was Government's Exhibit No. 14 for identification issued?

A. A horse race bet.

Q. And with whom did you place that bet?

A. A. J. Kahn.

Q. And did you make the bet on or about the date which the check bears? A. Yes.

(Testimony of Hubert Joseph Ursich.)

Q. And was that check regularly charged to your account? A. Yes.

Q. And also, was Exhibit 13 for identification charged to your account? A. Yes.

Q. Now, with reference again to Exhibit 14 for identification, I will call to your attention the fact that the endorsement is that of "Percy E. Welch." Do you know who Percy Welch is? A. Yes.

Q. And who is he?

A. He is or was an employee of A. J. Kahn or the Club Royal, I should say.

Mr. Carr: I move to strike that he was an employee of [32] A. J. Kahn, on the ground that there is no foundation.

The Court: He corrected it himself. He said, "or Club Royal, I should say."

Mr. Carr: I didn't hear that; I am sorry. It is very difficult to hear him.

The Court: Keep your voice up.

Q. (By Mr. Dunn): Now, I show you Government's Exhibit No. 15 for identification and ask you whether or not that is your check? A. Yes.

Q. And to whom was this Government's Exhibit No. 15 for identification given?

A. A. J. Kahn.

Q. And for what purpose?

A. Horse race bet.

Q. And was that on or about the date which the check bears? A. Yes.

Q. And again I show you the endorsement of "Percy E. Welch." Is that the same as you pre-

(Testimony of Hubert Joseph Ursich.)

viously identified? A. Yes, the name.

Q. Yes, and was that check regularly charged to your account? A. Yes.

Q. And I will show you Government's Exhibit No. 16 [33] for identification and ask you whether or not that is your check? A. Yes.

Q. And for what purpose was that given?

A. Horse race bet.

Q. And to whom? A. A. J. Kahn.

Q. And was that on or about the date which it bears? A. Yes.

Q. And among others, I notice the endorsement on it, "A. J. Kahn." Is that the endorsement of the defendant? A. I believe it to be, yes.

Q. Now, I notice as we are going through these here, Mr. Ursich, that Government's Exhibits 14, 15, and 16 for identification all bear the date December 14, 1953. Did you place more than one bet on or about that date? A. Yes.

Q. And you issued separate checks at those times, or can you explain the reason for the three checks?

A. Well, the explanation that I can give is that if I bet a horse and it lost, I had to come up with another check to bet another.

Q. Now, I show you Government's Exhibit No. 17 for identification and ask you whether or not that is your check? [34] A. Yes.

Q. And for what purpose was that check made?

A. Horse race bet.

Q. With whom did you place that bet?

(Testimony of Hubert Joseph Ursich.)

A. A. J. Kahn.

Q. And was that made on or about the date which the check bears? A. Yes.

Q. I call your attention to the fact that the endorsement is that of some initials plus "Andersen." Do you know the person who placed that endorsement on the check?

A. Well, I know an Anderson, but I don't know whether it is his signature or not.

Q. And the Anderson you know, where is he employed? A. The Club Royal.

Q. And was the Government's Exhibit No. 17 for identification regularly paid by your bank in the course of business? A. Yes.

Q. Now, I show you Government's Exhibit No. 18 for identification and ask you whether or not that is your check? A. Yes.

Q. And to whom did you deliver that [35] check? A. A. J. Kahn.

Q. And what was the purpose?

A. A horse race bet.

Q. And was that on or about the date which the check bears? A. Yes.

Q. And this endorsement is that of A. J. Kahn, the defendant, is that correct? A. Yes.

Q. I now show you Government's Exhibit No. 19 for identification, and ask you whether or not that is your check? A. Yes.

Q. And to whom was that check handed?

A. A. J. Kahn.

(Testimony of Hubert Joseph Ursich.)

Q. And for what purpose?

A. A horse race bet.

Q. And was that check regularly paid in the course of business, paid from your bank account?

A. Yes.

Q. I show you the endorsement "A. J. Kahn"; does that appear to be the endorsement of the defendant? A. Yes.

Q. I show you Government's Exhibit No. 20 for identification and ask you whether or not this was your [36] check? A. Yes.

Q. And for what purpose was this check made?

A. A horse race bet.

Q. With whom was that bet placed?

A. A. J. Kahn.

Q. And was it placed at or about the date that the check bears? A. Yes.

Q. I call your attention to the fact that the endorsement is that of "A. S. Manze." Do you know who A. S. Manze is? A. No.

Q. Now I show you Government's Exhibit No. 21 for identification and ask you again whether or not that is your check? A. Yes.

Q. And for what purpose was that check issued?

A. Horse race bet.

Q. With whom was the bet placed?

A. A. J. Kahn.

Q. And was it placed at or about the date that the check bears? A. Yes.

Q. And the endorsement, again, is "A. S. Manze," is [37] that correct? A. Yes.

(Testimony of Hubert Joseph Ursich.)

Q. Now, I show you Exhibit 22 for identification and ask you whether or not that is your check?

A. Yes.

Q. And what was the purpose of the check?

A. Horse race bet.

Q. And with whom was it placed?

A. A. J. Kahn.

Q. And was it placed at or about the date that the check bears? A. Yes.

Q. I call your attention to the fact that there is an endorsement which appears to be "J. J. DeKysor" or "ser," or something of that nature. Do you recognize that name?

A. Yes, I recognize the name.

Q. Who is Mr. DeKeyser?

A. He is a bar owner close to the Club Royal on 3rd Street.

Q. And to whom did you hand this check?

A. Mr. A. J. Kahn.

Q. And that was regularly paid in the course of business from your bank account?

A. Yes. [38]

Q. Now, I show you Government's Exhibit No. 23 for identification and ask you whether or not that is your check? A. Yes.

Q. And to whom did you deliver Government's Exhibit 23 for identification?

A. A. J. Kahn.

Q. And what was the purpose?

A. A horse race bet.

Q. Was that at or about the date which this

(Testimony of Hubert Joseph Ursich.)

check bears? A. Yes.

Q. And was this check, Government's Exhibit No. 23 for identification, regularly paid from your bank account? A. Yes.

Q. Now, I show you Government's Exhibit No. 24 for identification and ask you whether or not that is your check? A. Yes.

Q. And for what purpose was this check issued?

A. A horse race bet.

Q. With whom did you place that bet?

A. A. J. Kahn.

Q. And to whom did you give the check?

A. A. J. Kahn.

Q. Was the bet made at or about the date which the [39] check bears? A. Yes.

Q. I now place before you Government's Exhibit No. 25 for identification and ask you whether or not that is your check? A. Yes.

Q. And to whom was this check given?

A. A. J. Kahn.

Q. And for what purpose?

A. A horse race bet.

Q. And was the bet made at or about the date which the check bears? A. Yes.

Q. And do you recognize the endorsement?

A. No.

Q. And was Government's Exhibit No. 25 for identification regularly paid from your bank account? A. Yes.

Q. Now, I show you Government's Exhibit No. 26 for identification and ask you, again, whether or

(Testimony of Hubert Joseph Ursich.)

not that is your check? A. Yes.

Q. And for what purpose did you make that check? A. A horse race bet.

Q. And with whom did you place the bet? [40]

A. A. J. Kahn.

Q. To whom did you deliver the check?

A. A. J. Kahn.

Q. And was this Government's Exhibit No. 26 for identification regularly paid from your bank account? A. Yes.

Q. I notice the endorsement appears to be that of "Yale Kahn." Do you recognize the endorsement? A. Yes.

Q. Which is placed on it? A. Yes, I do.

Q. And which Yale Kahn is that, if you know?

A. The nephew.

Q. Now, I show you Government's Exhibit No. 27 for identification and ask you whether or not that is your check? A. Yes.

Q. And for what purpose did you issue that check? A. A horse race bet.

Q. And with whom did you place that horse race bet?

A. I don't know the signature, but I know the name. With this person Joseph F. Geraci, I believe.

Q. So you didn't place the bet with Mr. Kahn——

A. No.

Q. ——on this occasion? A. No. [41]

The Court: What exhibit number is that?

Mr. Dunn: That is No. 27 for identification, your Honor.

(Testimony of Hubert Joseph Ursich.)

Q. Now I show you Government's Exhibit No. 28 for identification appearing to be a counter check of the United States National Bank and ask you whether or not you made that check?

A. Yes.

Q. And for what purpose was Government's Exhibit No. 28 for identification made?

A. A horse race bet.

Q. And with whom did you place the bet?

A. A. J. Kahn.

Q. And did you deliver this check to him?

A. Yes.

Q. And was the Government's Exhibit No. 28 for identification regularly paid from your bank account? A. Yes.

Q. Was the bet placed on or about the date which the check bears? A. Yes.

Mr. Carr: May I have this one, please?

Mr. Dunn: Yes.

Q. Now, I show you Government's Exhibit No. 29 for identification and ask you whether or not you have seen [42] this check before, which purports to be the check of W. H. Babcock for $1,000.00 payable to Walker J. Atwell? Have you seen that check before? A. Yes, sir.

Q. And when did you first see Government's Exhibit No. 29 for identification?

A. March 17, 1954.

Q. What were the circumstances under which you saw that check?

A. Well, I called a friend of mine and asked

(Testimony of Hubert Joseph Ursich.)

him if he could loan me a thousand dollars as I didn't have any money to bet with, and this particular——

Mr. Carr: I move to strike this on the ground it is hearsay as to this defendant.

The Court: Don't give us the conversation. Tell us what happened.

A. A friend of mine brought me a check for a thousand dollars.

Q. (By Mr. Dunn): And was the person who brought you that check the payee of that check, Walker Atwell? A. No, sir.

Q. Who brought you the check, then?

A. Walker Atwell.

Q. That was my question. A. Oh—— [43]

Q. And did he deliver Government's Exhibit No. 29 for identification to you? A. Yes.

Q. And what did you then do with Government's Exhibit No. 29 for identification?

A. I gave it to A. J. Kahn.

Q. And for what purpose did you give him Government's Exhibit No. 29 for identification?

A. For some money I had lost to him.

Q. For what purpose? A. Horse race bet.

Q. And was that on or about the date which this check bears? A. Yes.

Q. I now show you Government's Exhibit No. 30 for identification and ask you whether or not that is your check? A. Yes.

Q. And for what purpose did you issue Government's Exhibit No. 30 for identification?

(Testimony of Hubert Joseph Ursich.)

A. Horse race bet.

Q. And with whom was that bet placed?

A. A. J. Kahn.

Q. And was the bet placed on or about the date which the check bears? [44] A. Yes.

Q. I again call your attention to the endorsement "A. E. Anderson." Does that appear to be the same endorsement as the previous Anderson——

A. Yes.

Q. ——that you have identified? A. Yes.

Q. Now, I show you Government's Exhibit No. 31 for identification and ask you whether or not that is your check? A. Yes.

Q. And for what purpose did you issue Government's Exhibit No. 31 for identification?

A. A horse race bet.

Q. And when was that bet made?

A. Probably around that date.

Q. Around the date which the check bears?

A. Yes.

Q. And with whom did you make that bet?

A. A. J. Kahn.

Q. I now show you Government's Exhibit No. 32 for identification and ask you whether or not that is your check? A. Yes.

Q. And for what purpose did you make Government's Exhibit No. 32 for identification? [45]

A. Horse race bet.

Q. And with whom did you place that bet?

A. I do not know.

(Testimony of Hubert Joseph Ursich.)

Q. Do you know whether Exhibit 32 for identification was regularly paid from your bank account?

A. Yes.

Q. Now, just to be sure that we have this clear, I understand that except for Government's Exhibits 27 and 32 which you identified as being not bets placed with A. J. Kahn, your testimony is that as to these Government's Exhibits Nos. 1 through 31, with the exception of No. 27, each of those was given as a wager to Mr. A. J. Kahn, the defendant?

A. Yes, sir.

Q. And each of those checks was paid from your account except the one which was issued by a Mr. Babcock, is that correct? A. Yes.

Q. And you in each case delivered these checks to Mr. Kahn? A. Yes.

The Court: We will take a five minute recess.

(Recess.)

The Court: You may proceed.

Q. (By Mr. Dunn): Mr. Ursich, you have identified a [46] number of checks for us in the years 1953 and 1954. Now, what was the last time that you had a betting transaction with Mr. Kahn, the defendant? A. In March of 1954.

Q. And will you give us a little better idea of what time during March that was?

A. Oh, the latter part of the month.

Q. Now, describe for us what happened at that time?

(Testimony of Hubert Joseph Ursich.)

A. On Friday I lost some money to Mr. Kahn, some twenty-three hundred dollars.

Q. And that was direct bets with Mr. Kahn?

A. Yes.

Q. Now, was that covered by any checks which we have exhibited to you up to this time?

A. No, sir.

Q. How did you pay for that bet, if you did?

A. On Saturday a man who was taking bets for Mr. Kahn told me that Mr. Kahn was in Las Vegas.

Mr. Carr: I object to any conversation out of the presence of the defendant, on the ground it is hearsay.

Q. (By Mr. Dunn): Before you go into that matter, Mr. Ursich, did some conversation occur between you and Mr. Kahn and someone else which indicated to you that this person was acting for Mr. Kahn or would act for him?

Mr. Carr: I object to this as leading and suggestive, [47] your Honor.

Mr. Dunn: He has already mentioned this man.

The Court: Objection overruled.

A. Yes.

Q. (By Mr. Dunn): And who was this other person?

A. A fellow by the name of Zimmerman, Al Zimmerman.

Q. And when did the conversation take place?

A. It took place on a Friday afternoon.

Mr. Carr: What was the date? May I have the date again?

(Testimony of Hubert Joseph Ursich.)

Mr. Dunn: I don't think he has given a date.

Q. It was about when, as near as you can recall?

A. I would say between the 24th and 26th of March.

Mr. Carr: What year?

Q. (By Mr. Dunn): But you remember it was a Friday? A. Yes, it was a Friday.

Mr. Carr: May I have what year?

Mr. Dunn: In 1954, he so testified.

Mr. Carr: We object to the question. This was March 26?

Mr. Dunn: Yes.

Mr. Carr: All right. I withdraw the objection.

Q. (By Mr. Dunn): Now, you stated that Mr. Zimmerman, Mr. Kahn, and you were present at this conversation? A. Yes. [48]

Q. And where did it take place?

A. At the Club Royal Office.

Q. All right, now, will you relate the conversation that took place at that time?

A. Mr. Kahn told me that I could place my bets with Mr. Zimmerman as if I was placing them with him; that he was leaving Mr. Zimmerman in charge; that he was going to Las Vegas.

Q. Was that the gist of the conversation at that time? A. Yes.

Q. And do you remember about when during the day that conversation took place?

A. Late in the afternoon, around 4:00 o'clock or so.

Q. Now, during the rest of the day, did you have

(Testimony of Hubert Joseph Ursich.)

any additional betting activities? A. Yes.

Q. And with whom did you then transact your business? A. Mr. Zimmerman.

Q. And this $2,300, was that transactions directly with Mr. Kahn, or does that include other transactions?

A. That would include both Mr. Kahn and Mr. Zimmerman for that Friday.

Q. Then, after that, did you have any additional transactions with Mr. Zimmerman, before Mr. Kahn's return? [49]

Mr. Carr: I object to all this on the ground that the Bill of Particulars specifically stipulates on March 26, 1954.

Mr. Dunn: Well, your Honor, I would like to state this, that we have a double situation here, because the Bill of Particulars was not granted as to Count One which mentions other betting activities, and also we have the problem of the person being in the business of betting, the business activity, and we are entitled to prove that. We are not trying to prove a specific item as such, but we are certainly entitled to show what the activity was.

The Court: The objection is overruled.

A. Yes; on Saturday.

Q. (By Mr. Dunn): And what happened at that time?

A. I came down to the Club Royal on Saturday about noon, and Mr. Zimmerman told me that he could not take any more betting from me until I paid the $2300 I lost the day before.

(Testimony of Hubert Joseph Ursich.)

Q. And did you respond to that?

A. Yes. I gave him $2300.

Q. And did anything happen subsequent to that in relation to betting activities?

A. Yes. I bet several bets that day with Mr. Zimmerman.

Q. All right. And anything else occur? [50]

A. I wanted to bet a thousand dollars on a horse, and he said that was more than Mr. Kahn would allow him to accept on any one horse; he could not take that amount without conferring with Mr. Kahn. So Mr. Zimmerman called Mr. Kahn at Las Vegas.

Mr. Carr: I object to this on the ground that no foundation has been laid to connect it with this defendant.

The Court: Objection overruled.

The Witness: Called Mr. Kahn at Las Vegas and explained the situation to him. Mr. Kahn asked to speak to me on the phone. Then he asked to speak to his son, Yale Kahn.

Q. (By Mr. Dunn): Did you speak to Mr. Kahn? A. Yes; I spoke to Mr. Kahn.

Q. Did you recognize his voice at that time?

A. Yes.

Q. And what was your conversation with him?

A. I said that I had a chance to get more than even because there was a good tip on this horse, that I would very much like to put a thousand dollars on it. He told me at that time, "That is more than I could afford," but if I insisted he would take five hundred and give another five hundred to his

(Testimony of Hubert Joseph Ursich.)

son, Yale Kahn, at San Diego, who was there in the office at that time.

Q. And who else talked to Mr. Kahn at that [51] time? A. Al Zimmerman and Yale Kahn.

Q. And did you overhear their conversations?

A. Only their end of it; yes.

Q. After that, what happened?

A. After that, Yale Kahn left the office. I hadn't made a bet with him, so I sent Al Zimmerman to the Grant Barber Shop, where Yale Kahn went to get a hair cut. He told me, as he left, "I am going to be over at the barber shop, if you want to make the bet, you send the money over."

Mr. Carr: I object and move to strike all the conversation on the ground that it was not in the presence of the defendant, it is hearsay as to this defendant.

The Court: The statement of Yale Kahn may go out.

Mr. Carr: Yes.

Q. (By Mr. Dunn): Now, with reference to Mr. Zimmerman, did you have further dealings with him after the telephone call?

A. I sent Mr. Zimmerman with the $500 check to Mr. Yale Kahn.

Q. And did you place any bet with Mr. Zimmerman himself?

A. Yes, $500; I placed that personally with Mr. Kahn on the phone. He had accepted the bets on the phone when he was at Las Vegas. [52]

(Testimony of Hubert Joseph Ursich.)

Q. So as I understand it, you placed two $500 bets? A. Yes.

Q. And did you see the defendant, Kahn, after that time?

A. Yes; I saw him on Monday morning.

Q. And did you have a conversation with him at that time? A. Yes.

Q. Where did that conversation take place?

A. In the office of Club Royal.

Q. And who was present. if you recall?

A. He and myself.

Q. This was the Monday following the Saturday bet; is that right? A. Yes.

Q. All right, what was the conversation?

A. He said I had quite a day. As soon as I came in the office, he told me I had quite a day, I almost got even. I said, "What do you mean, got even? I won $9600 on that $1,000 bet."

He said, "What thousand-dollar bet?"

I said, "Five hundred to you and five hundred to Yale."

"Oh," he said, "that entry was scratched. That bet is no good. Get out of here. I don't like you." He said, "Get out of here," and he pulled a gun. He said, "Get out of here." [53]

And that is the end. I have never spoken to Mr. Kahn since.

Q. Now, you started to relate for us at the very beginning that a conversation occurred prior to any betting activity, with Mr. Kahn. Now, do you recall about when that conversation took place?

A. I did not get the full question?

(Testimony of Hubert Joseph Ursich.)

Q. Well, I am referring to a conversation which you started to relate earlier, which took place before you had any betting activity at all with Mr. Kahn, some years before? A. Yes.

Q. Approximately when did that conversation take place?

A. Oh, that has been six or seven years ago.

Q. Well, can you tell us as near as possible what year it was?

A. I would say 1949 or 1950—I mean 1950, I believe 1950, or '49.

Q. Where did the conversation take place?

A. In the Club Royal.

Q. And who was present at that conversation?

A. Mr. Kahn and myself.

Q. What was that conversation?

A. He told me that as long as I was betting horses I might as well bet them with him, because some of these [54] fellows around the corner, if I won, wouldn't pay me.

Q. Was that the gist of the conversation?

A. Yes.

Q. Now, have you on any occasion placed bets for other people with Mr. Kahn? A. Yes.

Q. And for whom have you made those transactions?

A. Well, once or twice, I placed a bet for John Martinolich.

Q. And do you recall approximately when you made those bets? A. No; I don't.

(Testimony of Hubert Joseph Ursich.)

Q. Well, can you identify it at all with relation to the last transaction which you had?

A. Well, it would be around a year and a half to two years ago, something like that.

Q. Well, would that put it in 1953 or '54?

A. Yes; it would.

Q. And on how many occasions did that occur?

A. Oh, a very few times, two or three times, for Martinolich.

Mr. Dunn: You may cross-examine. [55]

Cross-Examination

By Mr. Carr:

Q. Mr. Ursich, you realize that you took an oath when you came into this Court, didn't you?

A. I do.

Q. And you understand the full import of that oath? A. Yes; I do.

Q. You understand the penalties and the pains that go with perjury? A. Yes.

Q. Now, do I understand you to say unequivocally that each and every one of these exhibits——

Mr. Dunn: He didn't.

Mr. Carr: I will start over.

Q. Do I understand you to say that each and every one of these exhibits—I think there were some excepted—that you said but for those two that you actually gave those checks to Mr. A. J. Kahn and he kept them and gave you no money in return; is that what you mean to say?

(Testimony of Hubert Joseph Ursich.)

A. Yes, sir; yes, sir.

Q. You are positive of that?

A. There is one thing there, that if the check itself wasn't given to A. J. Kahn, the money was given to A. J. Kahn from the check, except in one or two instances, which would be too difficult for me to identify. [56]

Q. Can you tell me one horse in that whole group of checks that you bet on, do you remember the name of the horse? A. No, sir.

Q. Will you pick the check out or tell me the horse? A. No, sir.

Q. What is your business?

A. I am a fisherman.

Q. You go to sea, don't you? A. Yes, sir.

Q. Were you at sea during any of the time, the dates of these checks? A. No, sir.

Q. You are positive of that? A. Positive.

Q. I am going to show you an exhibit. Were you at sea on November 11?

A. I have to look in my log book aboard this ship.

Q. Do you have it with you?

A. No, sir. My ship is out to sea.

Q. Don't you remember? That is November 11, Armistice Day, isn't it? A. Well——

Q. Again, that is a particularly important day in this country. [57]

A. I would imagine it is—I know it is.

Q. You would remember whether or not you were at sea on Armistice Day, wouldn't you?

(Testimony of Hubert Joseph Ursich.)

A. I would not.

Q. Well, if I told you, for the purpose of refreshing your recollection, that the records at the Fleet Office, the Fleet Office at the Van Camp Sea Food Company showed that on November 11, 1953, you were at sea, would that refresh your recollection?

A. No; no. I couldn't take that. I would have to take my log book to determine that.

Q. What is the name of your boat?

A. The St. Francis.

Q. Now, as I understand it, then, when you leave the country, you have to make no entry, is that right, as far as the records of the United States are concerned, you can leave for Mexico or go anywhere, isn't that right? A. No, sir.

Q. What is the story there?

A. The story is you clear Customs before you leave San Diego.

Q. So there would be a record at Customs, wouldn't there? A. Yes.

Q. And when you come back ashore, do you have to [58] report? A. Within 48 hours.

Q. And you have to report the date you land, don't you? A. Yes, sir.

Q. Now, you can't say, then, whether or not during any of this period of time, or can you say, that you are positive that during any of the dates of these checks that you were or were not at sea?

A. I can only say this: that I assume that if I

(Testimony of Hubert Joseph Ursich.)

endorsed a check, that I was in town at that time, all except for one check.

Q. About the November 11 check?

A. All except for one check, one check I had given to Mr. Kahn, if I recollect now—you refresh my memory—one check I gave to Mr. Kahn and postdated it. Now, there might be something in that.

Q. Well, here is Exhibit No. 8. It is dated November 11.

(Mr. Carr hands said exhibit to the witness.)

A. Yes.

Q. Well, I take it, then, that that is the check that you postdated?

A. Probably, it could be. There was one check that I postdated. [59]

Q. So, let me ask you this: if it should develop that you were at sea on November 11, would there be any way that you could explain how this check would be dated November 11? A. Yes.

Q. How?

A. At one time I left for fishing owing Mr. Kahn quite a bit of money, and I asked him his permission to pay him when I returned from a trip. Mr. Kahn said, "That's fine, write me a check for when you expect to return from the trip." Whether that is the check or not, I don't know.

Q. I am coming to about the return time, Mr. Ursich. Ursich, is it? A. Ursich; yes.

Q. You returned—let me see, just give me one moment. Do you remember having a damage to your boat?

(Testimony of Hubert Joseph Ursich.)

A. At what time? Well, I think it was 8-19-1953.

Q. That would be August 19, 1953?

A. Yes.

Q. Do you recall when you returned on that trip? A. Not without my log book.

Q. Well, let me see if I can't refresh your recollection. That is the St. Francis we are talking about? A. That is the St. Francis. [60]

Q. Isn't it a fact that the St. Francis arrived back into port at San Diego on November 19, 1953, and the manifest number—I mean August 19, 1953, do you remember that?

A. I do not remember that, sir, without my log book.

Q. Now, then, the next time that the St. Francis arrived in San Diego was February 3, 1954, do you remember that?

A. Not without my log book.

Q. Where is your log book? It is still on the ship, is that correct?

A. That is where it belongs, on the ship.

Q. You made no effort to check your records before you came here, to testify, to determine whether or not you were out at sea during the time——

A. No, sir.

Q. Now, I want to ask you if it isn't a fact that the St. Francis arrived back in San Diego on November 19, 1953, and I will give you the manifest number, Manifest No. 1050?

A. Without my log book, I can't answer.

(Testimony of Hubert Joseph Ursich.)

Q. One other question; but this Exhibit No. 8 is not a postdated check, is it?

A. I do not know. I gave him one postdated check.

Q. But you don't know whether this is the one [61] (indicating)? A. No, sir.

Q. Now, Mr. Ursich, you don't feel too kindly toward Mr. A. J. Kahn, do you?

A. I have no hard feelings against Mr. Kahn whatsoever. I harbor none.

Q. You mean you feel friendly toward him, now? A. No. Just as if I never knew him.

Q. You went to Mr. A. J. Kahn and demanded money from him, did you not, some several thousand dollars? A. Monday morning.

Q. Did you see him after that? A. Never.

Q. Do you know a man by the name of—I will withdraw that question for the moment. You claimed that Mr. Kahn failed to pay you on a bet on a horse named Imbros, is that right?

A. Yes.

Q. The horse did not run in the race, did he?

A. The entry—I bet no Imbros—I bet A entry.

Q. You made the bet, you say, with this defendant? A. Yes, sir.

Q. And where is the check that covered that thing? A. They never came to light.

Q. Never came to light? [62]

A. No, I never saw them.

Q. No. I mean the check that you put up, where is your check?

(Testimony of Hubert Joseph Ursich.)

A. They weren't entered into my bank.

Q. Well, you must have paid them or gave them a check, didn't you, did you give them a check?

A. Yes, sir.

Q. And what happened to the check?

A. I do not know.

Q. You mean as far as you know, they tore it up? A. As far as I know.

Q. Where were you when you wrote the check?

A. At the Club Royal office.

Q. Was this defendant present?

A. No, sir. This defendant was in Las Vegas.

Q. And how many other bookmakers were sitting around there the day that you were in there and wanted to bet on the entry with Imbros?

A. There were several.

Q. What kept you from making your bet with them?

A. I made most of my bets with Mr. Kahn.

Q. Now, as a matter of fact, you knew some bookmakers that came around the place there; that is a bar, isn't it? A. That is an office.

Q. Isn't this Club Royal a bar and a place to eat? [63]

A. The Club Royal is a bar, a place to eat, and an office.

Q. Well, did you spend your time in the office or at the bar?

A. I have spent it all over. Sometimes at the bar. Sometimes in the office.

Q. And you know the various bookmakers that

(Testimony of Hubert Joseph Ursich.)

sit around there, do you? A. I know some.

Q. Well, let us see if you can give me some names.

A. I don't know them by name. I know them by —well, Zimmerman was one.

Q. How long have you been going to the Club Royal? A. Oh, for eight or nine years.

Q. And you only knew one bookmaker?

A. I know several, I said.

Q. But you only know the name of one bookmaker?

A. Well, I knew Al Zimmerman. I knew another that has died.

Q. Yes. Who is he? A. Ed Siegal.

Q. What other bookmakers?

A. By name I don't know either too many of them.

Q. How about a fellow by the name of Charlie Thornton? [64] A. Charlie?

Q. Yes.

A. I don't know anybody by that name.

Q. Tex Cook?

A. I don't know anybody by that name.

Q. Well, now, Mr. Ursich, you know that this Club Royal is sort of a hang-out place for a great number of bookmakers, didn't you? A. Yes.

Q. So I am asking you now why you did not lay your bet with those bookmakers there instead of making it on the telephone?

A. Mr. Kahn and I were friendly, we were supposed to be good friends, and he had mentioned to

(Testimony of Hubert Joseph Ursich.)

me on more than one occasion that when I should like to place a bet, to place it with him.

Q. You just felt obligated that you couldn't make that kind of a bet with any other bookmaker, that you should make it with A. J. Kahn, is that correct? A. Of that size, yes.

Q. But if it wasn't of that size, you could make bets with other bookmakers of smaller sizes?

A. Yes.

Q. Now, I want to go down this list of checks here, and I want to ask you some questions, and start right [65] with Exhibit No. 1.

Mr Ursich, do I understand you to say that Mr. Kahn pulled a gun on you? A. Yes, sir.

Q. And where was this occasion?

A. In his office.

Q. And what kind of a gun was it?

A. Oh, it was a rather large pistol.

Q. A revolver or an automatic?

A. It looked to me like a revolver.

Q. Do you know the difference that there is between a revolver and an automatic?

A. Yes, sir.

Q. And the difference is what?

A. In the barrel, the cylinder.

Q. And it was a revolver? A. Yes, sir.

Q. And can you tell me, from looking at it, was it a .38? A. No.

Q. A .22?

A. No, no, I can't tell you the caliber.

Q. Then, you are not acquainted with guns?

(Testimony of Hubert Joseph Ursich.)

A. Not to a great extent.

Q. Well, where, from what part of his anatomy or [66] from where did he get the gun?

A. From the desk drawer.

Q. And you were seated there?

A. No, sir.

Q. You were standing?

A. I was standing.

Q. And he just threw up, pulled the gun up and said, "Get out of here"? A. That's right.

Q. Did you make any complaint to the police department? A. No.

Q. Did you get out? A. Yes.

Q. He did not frighten you, though, did he?

A. Well, not particularly.

Q. You are a captain on a fishing vessel?

A. Yes, I am.

Q. You have been handling men for a great many years, haven't you? A. Yes.

Q. What do you weigh?

A. Oh, I weigh somewhere around 215 pounds.

Q. And I take it that you are pretty capable of taking care of yourself under those circumstances, is that right? [67] A. Absolutely.

Q. And Mr. Kahn did not frighten you with this gun? A. No, sir.

Q. And how long did he have the gun focused on you?

A. To my recollection, he never pointed the gun directly at me. He pulled it out of the drawer and he held it in his hand, and he said, "Get out of

(Testimony of Hubert Joseph Ursich.)

here. Don't threaten me." And I hadn't threatened him.

Q. Oh, he said, "Don't threaten me"?

A. He said, "Don't threaten me." But I knew the situation immediately. There was a friendship gone for $10,000.

Q. Now, it wasn't long after that talk we are talking of, after this alleged Las Vegas bet, you had some conversation with Yale and with Mr. A. J. Kahn about collecting some several thousand dollars, didn't you? A. Yes.

Q. Isn't it a fact that you went to Mr. A. J. Kahn on Monday morning, after this alleged bet, and said to him that you had talked to Yale Kahn and that Yale wouldn't pay off the bet? Isn't that what you said?

A. I do not think that I told Mr. Kahn that.

Q. Well, what do you think you told him?

A. I saw Yale Kahn on Saturday night. When I entered his place of business, The Tops Club in San Diego; [68] my wife and I and another couple entered The Tops Club, and we no sooner got to the bar than Yale came up to me and said, "One of your horses was scratched. I am not paying off."

I told him, "Get away from me. If you don't pay off, I guess your father will, because I know your reputation, Yale, but I am sure your father will pay off."

Q. Now, Yale is the man that does the gambling in the family, isn't he?

A. That I don't know.

(Testimony of Hubert Joseph Ursich.)

Q. Now, isn't it a fact that you never in your life made a bet with Mr. A. J. Kahn, an actual bet?

A. I didn't hear that.

Q. Did you ever really make a bet with Mr. A. J. Kahn personally? A. Why, yes.

Q. Are you sure of that? A. Positive.

Q. Then, Mr. Yale Kahn and his father are not partners in the Royal, you know that, don't you?

A. I do not know the business arrangement in the Royal.

Q. Well, haven't you been told and heard it many times that Mr. Kahn is merely the manager of the place? A. No, sir. [69]

Q. You never knew that? A. No, sir.

Q. Now, let me ask you, on Monday you went to see Mr. Kahn and told him in substance that Yale would not pay off, that is what you told him, isn't it? A. It isn't.

Q. What exactly did you tell him?

A. I don't believe that I mentioned Yale at all.

Q. Well, you had been to see Yale and talked to him?

A. I hadn't been to see Yale and to talk to him whatsoever. I went to The Tops to have dinner with my wife and another couple and Yale came to see me.

Q. Now, isn't it a fact that Mr. Kahn told you in that conversation that he was familiar with the fact that Yale had called him about placing this bet on this horse Imbros and he was attempting or looking around to do it, and that the horse was

(Testimony of Hubert Joseph Ursich.)

scratched and he told Yale that no bet was made? He was making the bet for Yale, wasn't he?

A. That I don't know, what he was doing for Yale.

Q. At any rate, you said you had $10,000 coming from somebody, is that right? A. $9,600.

Q. And who were you looking to to get that?

A. I was looking to Mr. Kahn because Mr. Kahn told me to place $500 with Yale and he would take $500 himself. [70]

Q. Did you ever deliver $500 to Mr. A. J. Kahn in connection with that particular bet?

A. On that particular bet, no.

Q. Isn't it the parlance of the trade that unless you put up money you don't get paid off, eventually?

A. He and I had been doing business that would go over to the next day or go over a week end, for years.

Q. So, when these checks were issued—I show you various exhibits, Nos. 1 through 32, excluding the two I think it is——

Mr. Danielson: 27 and 32.

Q. (By Mr. Carr, continuing): 27 and 32, these checks covered a series of bets, is that right?

A. Yes.

Q. Not one particular bet, is that correct?

A. I do not——

Q. Well, let us take one of them here; here is a check, here is a $50.00 check, Exhibit No. 1. Did

(Testimony of Hubert Joseph Ursich.)

that cover one bet, two bets, three bets, how many bets?

A. To the best of my recollection, this would cover one bet.

Q. Then, I notice this particular check is endorsed "A. J. Kahn" and "A. E. Anderson," is that right? A. Yes.

Q. Who is A. E. Anderson? [71]

A. He is the cook in the Club Royal.

Q. Isn't it a fact, Mr. Ursich, that the custom and practice there was that you hung around the place and you would want money and they would cash your checks for you? A. Yes, sir.

Q. Isn't it a fact that Exhibit No. 1 was taken by the cook because they didn't have money in the cash register?

A. They didn't have $50.00 in the cash register.

Q. Well, isn't it a fact that on this particular check A. E. Anderson took it down to the bank and cashed it and brought the cash back?

A. No. To the best of my knowledge, no.

Q. Then, why did the cook endorse it, then?

A. I do not know. I never gave it to the cook.

Q. Did the cook Anderson ever give you any cash, hand you cash? A. No.

Q. Never at any time?

A. Oh, he might have, he might have cashed a check for me on occasion. He might have.

Q. The cook didn't cash the checks, did he? He went to the bank, took your check and Mr. Kahn or

(Testimony of Hubert Joseph Ursich.)

someone at the place of business endorsed it, and put his name on it, and brought the cash back to you, isn't that the fact? [72]

A. He has on one or two occasions. He has done that on one or two occasions.

Q. Then, looking at the back of a check here, it says, "A J Kahn" and "A E Anderson."

A. Yes.

Q. Isn't that just what occurred on this occasion? A. No, sir.

Q. How do you know?

A. Because Mr. Kahn's signature is on it.

Q. Didn't you know that Mr. Kahn would oftentimes endorse the checks, they didn't have the money to take up the check, they were a little short, and he would turn it over and endorse it, hand it to an employee, and the employee would endorse it and take it to the bank that day? Did you know that?

A. I know that I seen Mr. Kahn endorse the checks. Mr. Anderson could endorse the check for himself if he would take it to the bank.

Q. Didn't you know that as a rule there at the Club Royal, the bank was not willing to cash those checks unless the employee who took it down put his name on the check so they would have a record of what took place?

A. When I separated my checks, there were several checks that are not in these exhibits whatsoever. I separated what I considered to be horse race bets. The rest [73] I left aside.

(Testimony of Hubert Joseph Ursich.)

Q. Isn't it a fact that the procedure was that sometimes when you would cash a check right at the Club Royal at the counter, they would hand you the cash right there, right? A. Yes.

Q. But sometimes the occasion would be that they didn't have the cash to cash the check, and in that case somebody would endorse it at the place, then an employee would take it to the bank and cash it and bring the cash back and deliver it to you?

A. For $50.00? I know that, but for $50.00 they have that cash.

Q. Now, you are making a misstatement. You don't know whether they had the cash, you don't know whether they were short on that day or whether they weren't?

A. I never looked in their till or in their safe.

Q. I show you another check, endorsed "A J Kahn, A E Anderson," Exhibit No. 2. This is for $120.00. Isn't it a fact that that check was taken down to the bank by A. E. Anderson and the cash brought back by A. E. Anderson and delivered to you? A. No, sir.

Q. You are positive of that?

A. I am not positive, but I would say to the best of [74] my ability the answer would be "No."

Q. Now, then, I find one here which is Exhibit No. 3. This is dated September 16, 1953. On the back of this check it says "O.K. A J Kahn A E Anderson," on the back. Isn't it a fact that Anderson, the employee, then took it, went down to the bank, got the cash, and brought it back and deliv-

(Testimony of Hubert Joseph Ursich.)

ered to you the sum of $300? A. No, sir.

Q. You are positive of that? A. Positive.

Q. How can you be positive of that?

A. The only thing that I can tell you is that for a check of $300, that I would not give it to Mr. Anderson and say, "Here, go cash this check for me." That check meant to me that that was the paying off on the horse race bet.

Any checks that I was in doubt about in my bunch of checks, any checks that I was in doubt about, I discarded aside and never brought in to the investigator.

Q. What I am asking you is this: How can you be positive that that $300 was not delivered to you by Anderson? A. I am positive on that.

Q. But you have no way of telling me that you are positive? [75] A. Well, I have a memory.

Q. I show you the next check. We will skip along here. We will take "Club Royal Yale Kahn" on Exhibit No. 5. A. Yes.

Q. Who was present when you gave that check to Mr. A. J. Kahn? A. I wouldn't remember.

Q. Would you remember where you were when you gave it to him?

A. Club Royal, because I wasn't in the habit of giving him any checks at any other place but the Club Royal.

Q. Well, these checks, I take it, then, were given, this $50.00 check, Exhibit No. 5, September 22, 1953, was given for the purpose of making a bet on a horse

(Testimony of Hubert Joseph Ursich.)

with Mr. A. J. Kahn? A. Yes, sir.

Q. That you are positive of? A. Yes.

The Court: We will recess until 2:00 p.m.

(Whereupon, at 12:00 o'clock Noon on Wednesday, September 5, 1956, a recess was taken until 2:00 p.m. of the same day, Wednesday, September 5, 1956.) [76]

Wednesday, September 5, 1956—2:00 P.M.

HUBERT JOSEPH URSICH

resumed the stand on behalf of the plaintiff, having been previously duly sworn, and testified further as follows:

Cross-Examination

(Continued)

By Mr. Carr:

Q. I want to show you Exhibit No. 3, which is a check dated September 16, 1953, for $300. You say that you gave that to Mr. Kahn for the purpose of making a bet?

A. I say the money went to him for making a bet.

Q. Do you notice that the endorsement on it shows that it was cashed somewhere else, "For Deposit Only Surf Club"?

A. Where is that, sir?

Q. You know where the Surf Club is, don't you?

A. No, I do not.

(Testimony of Hubert Joseph Ursich.)

Q. Don't you know where the Marcos people—is it the Marcos people that run the Surf Club?

A. No.

Q. Don't you know where the Surf Club is?

A. No.

Q. You never heard of it? A. No.

Q. But you do see that endorsement on there, don't [77] you, "Surf Club"?

A. I see "Surf Club" and "Ventura" Place.

Q. You never heard of that? A. No, sir.

Q. That is at Pacific Beach, but you never heard of it? A. I never was there, never was there.

Q. Do you see, by the way, that it has "OK A J. Kahn" on it? A. Yes, I see that.

Q. Don't you recollect that that check was taken to the bank, they wouldn't cash it and they brought it back, and you took that check to that place and got it cashed with the name of A. J. Kahn on it?

A. I never been in this place in my life. I don't know where it is at.

Q. By the way, you are a fairly heavy drinker, aren't you?

A. Well, just what do you call a fairly heavy drinker?

Q. Well, I mean when you get in this place, around the bar? I am not going to imply it is criminal, but you get pretty well loaded, don't you?

A. Well, no, I have never been drunk in my life. Have you?

Mr. Carr: Well—— [78]

The Court: Just answer the questions. You are

(Testimony of Hubert Joseph Ursich.)

here to answer questions. You are not here to ask questions.

Q. (By Mr. Carr): You patronize the bar and you have for many years at the Club Royal, don't you? A. Yes.

Q. You sit there for many hours, don't you, and have drinks? A. Continually?

Q. Yes. A. No, sir.

Q. Well, you drink over a period of five or six hours, don't you? A. Steadily?

Q. Well, drink.

A. You might over a period of five or six hours, but how many drinks in five or six hours?

Q. Well, I don't know.

A. I don't know what you are implying.

Q. You have never been drunk in the Club?

A. I have never been drunk in my life.

Q. I see. Now, then, I show you the next exhibit, No. 5, which has on it, the back of it, "Club Royal Yale Kahn." Do you remember specifically how that transaction was handled?

A. I do not. As I told you before, I picked the [79] checks that I was fairly certain were horse race bets, and put the others away.

Q. I notice you say, Mr. Ursich, "fairly certain"; in other words, it is just more or less a conclusion from examining your checks that this probably was one you gave for a bet, is that right?

A. Not just probably. To the best of my ability.

Q. Well, don't you remember? There must have been some way that you picked this check. I am

(Testimony of Hubert Joseph Ursich.)

trying to find out how you remember this check was a bet?

A. I remember, because if I wanted to cash it for cash alone, the check would be $20.00. Never $50.00 for cash alone.

Q. I see. Now, you from time to time would say to Mr. Kahn, or to some one of the employees, "Let me have $20.00, let me have $30.00," wouldn't you?

A. Yes, sir.

Q. And they would hand it to you?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, when you got ready to pay that back, a check would be cashed and you would add that into the check, is that right? A. No, sir. [80]

Q. Well, how would you pay it back?

A. Cash.

Q. Only by cash? A. That is right.

Q. You never added it on at any time to a check?

A. No, sir; not to any of those checks you see.

Q. I show you next Exhibit No. 6. This is a check again for $50.00, September 22, 1953. How can you tell me that that was given for a bet?

A. To the best of my ability, it was given for a bet.

Q. Well, there must be some reason, you must have some reason for saying that?

A. I just stated here that when I wanted cash, when I wanted cash, as much cash as I needed around the Club Royal, that $20.00 was sufficient.

(Testimony of Hubert Joseph Ursich.)

Q. All right, then, I show you a check here which is for $100. This is Exhibit No. 7.

A. Yes.

Q. Why do you say that that was given as a bet? A. For the same reason as I mentioned previously.

Q. But you have no distinct recollection as to that particular bet, do you?

A. I know it was a horse race bet.

Q. Why do you know it?

A. Because when I needed cash, I never cashed a check [81] for more than $20.00 at a time.

Q. You notice that that is endorsed by Mr. Yale Kahn? A. Yes, sir.

Q. Were you betting with Yale Kahn?

A. No, sir; not the nephew.

Q. Was Mr. Yale Kahn there that day?

A. He evidently was. His signature is on it.

Q. Then, why did you have Yale Kahn endorse it and give it to Mr. A. J. Kahn?

A. I don't know.

Q. Then, the next check I will show you is Exhibit No. 8. I believe I have gone into this.

I won't take much time, your Honor.

This is a check dated November 11. I think I questioned you about that. That is for $620.00?

A. Yes.

Q. Do you distinctly recollect that that was for a bet?

A. That, I believe, sir, was a postdated check, when I went fishing. Now, I am not positive on this.

(Testimony of Hubert Joseph Ursich.)

I know it was for a horse race bet. But I think it was the postdated check, when Mr. Kahn told me I wouldn't have to pay until I came back, to postdate a check when I expect to be back. It was one check. Whether it was it or not, I do not know.

Q. I take it that you have concluded, after thinking [82] it over, that you were at sea November 11? A. I haven't given it a thought.

Q. I see. Now, I want to ask you this question about this check: isn't it a fact that this check occurred in this fashion, that you wanted to make a bet at Tijuana and you called Mr. Abe Kahn and said to him, "Would you let Percy Welch go over the border and make a bet for me today? And he said, "It is all right with me," and Welch went across to Tijuana, took $600 and bet for you, and then you came in and you took $20.00 in cash, and that made up the $620.00; is that correct or not?

A. No, sir.

Q. Do you say that Percy did not go across to Tijuana and make that bet for you?

A. Not for $600.00, no.

Q. Well, for part of it?

A. Not for a very small fraction. Percy went to Tijuana for me, at one time, for a $100 bet.

Q. That wasn't at this time?

A. No, sir. It could have been at that time, but never with that check.

Q. Now, you say it could have been or it wasn't. Now, tell me, which do you remember? What is your recollection?

(Testimony of Hubert Joseph Ursich.)

A. My knowledge is this, that I have never sent Percy [83] to Tijuana with a check for $620.00 or even $220.00.

Q. I think you misunderstood me, Mr. Witness. I didn't mean that he took the check. I was asking if it wasn't a fact that you called Mr. Abe Kahn and told him you wanted Percy to go across to Tijuana and make a bet and that you delivered $600.00, that you gave the $600.00 and that you had also drawn $20.00 from the till that day or prior to that day, and you wrote out this check for $620.00 to cover the $20.00 plus the other money, and part of which I take it you sent Percy to Tijuana with, was that correct? A. No, sir.

Q. Did he go to Tijuana to make a bet?

A. Never did I ask Mr. Kahn's permission.

Q. Well, Percy works for the Club Royal, doesn't he? A. I do not know.

Q. And do I understand you to say that you don't know Percy Welch?

A. I do know Percy Welch.

Q. Well, don't you know that Percy has been working at the Club Royal for some time?

A. To the best of my knowledge, Percy Welch is not working at the Club Royal

Q. How often have you seen him around there?

A. I haven't seen Percy more than twice——

Q. But during this time, during 1953 or 1954, wasn't [84] he there every day?

A. Yes, sir; he was working there at that time.

(Testimony of Hubert Joseph Ursich.)

Q. Well, this is the time I am talking about, this was 1953, Percy was working there then, wasn't he? A. At the time, he was.

Q. And you got Percy to go across at this particular time to make a bet in Tijuana?

A. No, sir.

Q. Very well.

I will next come to Exhibit No. 9. Now, Exhibit No. 9, Mr. Witness, is a check made out to "Cash," and it is endorsed "John H. Willson." You say you gave that check to Mr. Abe Kahn? A. Yes.

Q. Well, Mr. John H. Willson is a bookmaker, isn't he? A. To the best of my knowledge.

Q. Mr. John H. Willson was a bookmaker that you actually made the bet with, with this check, at the time?

A. No. I have never made a bet with Mr. John Willson, at that time.

Q. Well, how does it happen, if you know, that this check, Exhibit No. 9, got into the hands of John Willson? Do you know?

A. I do not know.

Q. And do you know why it is that Mr. Kahn's endorsement [85] does not appear on it in any way?

A. No, I do not know.

Q. Was this total of $200 bet with Mr. Kahn?

A. Yes, sir.

Q. Do you remember the horse? A. No, sir.

Q. Do you remember the day of the incident?

A. Well, not exactly.

Q. That is a pretty good sized bet, isn't it?

(Testimony of Hubert Joseph Ursich.)

A. No. It is a fair sized.

Q. I take it, as a skipper—you are a skipper on a fishing vessel, is that right?

A. That is correct.

Q. And I take it you make substantial money?

A. At times.

Q. Now, is it a normal thing for you to bet $200 on a horse race? A. At that time.

Q. Was that considered a large or a small bet for you at that time?

A. I made them bigger and I made them smaller. I can't define it for you.

Q. Now, I want to call your attention to this, and I want you to listen very carefully: Here is an exhibit, Exhibit 10. This is a check dated December 1, 1953, [86] and it is made out to "Cash" for $50.00, signed by you, and on the back it has the endorsement, "Kay Marcos." Who is Kay Marcos?

A. It is a woman that lives at San Diego.

Q. Does she or her people have a place next door to the Club Royal?

A. Well, her people do, yes.

Q. How close to it? A. Next door.

Q. And that check was cashed by you there, wasn't it? A. No, sir.

Q. Well, how did it get into the hands of Kay Marcos? A. I do not know.

Q. But you say you gave this check to Mr. Kahn?

A. Yes. You will have to ask Mr. Kahn.

Q. Do you notice down at the bottom here (in-

(Testimony of Hubert Joseph Ursich.)

dicating Exhibit No. 10) that this was endorsed "Hafter's"? A. Yes, sir.

Q. You don't know how that got on it, do you?

A. No.

Q. Are you willing to state under oath, positively, that this check was not given by you to someone at the Marcos property? A. Yes, sir. [87]

Q. You are positive of that? A. Positive.

Q. And the name of that place is The Turf Restaurant, is that right, is that the correct name?

A. Of which place, sir?

Q. Where the Marcoses have their place.

A. Kay Marcos was not employed at the Marcos place.

Q. Her parents.

A. Her parents own the Turf Club.

Q. They run the place, is that right?

A. Her parents run the Turf.

Q. And that is the Turf Club, is it?

A. Yes, sir.

Q. And you are positive that this check was not cashed by you there? A. Positive.

Q. And you are positive that you didn't give this check to Kay Marcos? A. Positive.

Q. And get the cash for it?

A. That is right.

Q. Now, the next check I want to ask you about is Exhibit No. 11. I want you to look at this very carefully. This is dated December 15, 1953, to "cash" in the amount of $100.00 and endorsed on the back, "Eleanor Kahn." [88] Do you know

(Testimony of Hubert Joseph Ursich.)

Eleanor Kahn? A. I do not.

Q. Do you know the next endorsement, "H. Verdugo"? A. I do not.

Q. You don't know how that got on there?

A. No, sir.

Q. I want to ask you, now, if it isn't a fact that on approximately the 5th day of December, 1953, that is right, the 5th day of December, 1953, if it isn't a fact that you walked into the Club Royal and was eating there—and this gentleman here, Mr. Irvin Kahn, a lawyer in San Diego, do you know him? A. Yes, sir.

Q. (Continuing): And isn't it a fact that he walked in at that time and you told him that you needed a hundred dollars cash and that he cashed this check for you? A. No, sir.

Q. You are positive of that? A. Positive.

Q. Now, the next check is dated December 11, 1953, and it is Exhibit No. 12, it is made out to "Cash," it is $100, and it is endorsed "Club Royal Yale Kahn." Did you talk to Yale Kahn about this check at all? A. No, sir.

Q. Do you know why Yale Kahn's name was put on the [89] check?

A. Probably cashed the check there.

Q. You cashed the check there?

A. Yes, probably did.

Q. Oh, then, you cashed the check there?

A. That is right.

Q. I thought you said on your direct testimony that you gave Mr. Abe Kahn this check for a bet?

(Testimony of Hubert Joseph Ursich.)

A. That is correct.

Q. Well, I don't quite follow you now. Which?

A. It is the same; it is the same, sir.

Q. You mean when you cashed that check with Yale, you took the money in and bet with Abe, is that what you mean?

A. There were a few instances like that, but not this whole—most of the checks went directly to A. J. Kahn.

Q. Well, I am talking about this particular one. This one you will notice is December 11, 1953; it is Exhibit 12, and on the back it says, "Club Royal Yale Kahn." A. Yes.

Q. Well, did you speak to Yale Kahn?

A. No, I haven't spoken to Yale Kahn, because I feel sure he wouldn't remember either, if I did speak to him about it.

Q. Well, do you know why, if you know, Yale Kahn's [90] name appears on this check?

A. I do not know.

Q. But you say you gave it to Mr. Abe Kahn?

A. That is right, to the best of my ability.

Q. The next one, the check marked Exhibit No. 13, is for $200.00, the same day, December 11, and on the back you will notice "Club Royal Yale Kahn." A. Yes.

Q. Did you give that to Mr. Abe Kahn?

A. To the best of my knowledge, yes, sir.

Q. Can you tell me why it happens that Yale Kahn's name appears on this?

(Testimony of Hubert Joseph Ursich.)

A. I do not know.

Q. And the next check is dated the 14th of December for $400 to "Cash." I want you to notice this check in particular. On the back it says "Percy," and I guess that is a "C," isn't it, "Welch 3335 Steele St." A. Yes, sir.

Q. Did you give that check to Mr. A. J. Kahn?

A. I believe, sir, that this check was a horse race bet given to Mr. Kahn and taken by Percy to the bank to cash.

Q. In other words, it is your testimony that you gave the check to Mr. A. J. Kahn as a bet?

A. Yes. [91]

Q. And that Mr. Kahn turned around and had the check cashed? A. Yes.

Q. Through Percy Welch? A. Yes.

Q. Isn't it a fact, Mr. Ursich, that Percy Welch went to the bank, to your knowledge, got this $400.00, brought it back, and delivered it to you?

A. No, sir.

Q. You are positive of that?

A. To the best of my knowledge, and my remembrance, no, sir.

Q. But you don't have a very clear recollection about it?

A. I do have a very clear recollection about it.

Q. Then, you do remember that Percy Welch did not give you the $400?

A. No, sir; he didn't give me the $400.

Q. All right. The next check is December 14, and here is another one of the same date, in the same

(Testimony of Hubert Joseph Ursich.)

amount of money, endorsed on the back "Percy E. Welch," and I think it is "3335 Steele St." Now, can you be more positive about that one?

A. No. This would mean the same as the other one.

Q. In other words, you gave the check to Mr. Kahn, [92] to Mr. A. J. Kahn? A. Yes.

Q. It was a bet? A. That is right.

Q. And Percy Welch didn't go to the bank and bring you the money? A. No, not to me.

Q. I have here the next Exhibit, which is December 14, for $100, to "Cash," and the endorsement on the back shows "A. J. Kahn," in pencil, and "A E. Anderson." You know who A. E. Anderson is, don't you? A. Yes.

Q. Who is he?

A. He is a gentleman sitting here now.

Q. And what is he?

A. He is the cook at the Club there.

Q. He is the cook? A. Yes.

Q. Now, isn't it a fact he went to the bank, got the money, and brought this $100 and handed it to you? A. No.

Q. You are positive of that?

A. I am positive of that.

Q. You gave this to Mr. A. J. Kahn as a bet?

A. Yes. [93]

Q. And the next exhibit, Exhibit No. 17, is for $50.00, and it is dated December 14, and it is endorsed just by "A E Anderson"; the same date, do you notice that? A. Yes.

(Testimony of Hubert Joseph Ursich.)

Q. Did he go to the bank and get the money on that one?

A. When I was home sorting checks, I came across this, sir, and I believe this check could have been one that Anderson brought to me, the money personally, because it doesn't have Mr. Kahn's signature on it.

Q. All right. So, then, you are not sure that you made this as a bet with Mr. A. J. Kahn?

A. That is right.

The Court: What is the number of that?

Mr. Carr: That is Exhibit 17, your Honor.

Q. The next exhibit is No. 18, and this has on the back in pencil "A J. Kahn." Do you notice that? A. Yes.

Q. This is Exhibit 18, and it is for the sum of $200. You say it was given to him to make a bet?

A. That was given to him as a horse race bet.

Q. How do you remember that it was given as a horse race bet?

A. Because, as I stated, that in segregating the checks, the checks that I felt that I knew were checks [94] that I cashed at the bar, were put on one side, and the checks that I felt were horse race bets were put on another side. And I also stated, sir, that if I wanted cash on a check and I was at the Club Royal, I never wrote a check for more than $20.00.

Q. Now, we will take them up as rapidly as we can. The next one is Exhibit 19. This one, if you desire to see it, is for cash. You have a perfect

(Testimony of Hubert Joseph Ursich.)

right to see these. This check is made out in the sum of $100, it is dated March 4, and it is endorsed on the back in pencil "A J Kahn" and in ink by "Andre Anderson." Now, is that one that Anderson brought you the cash on?

A. No, sir. That is definitely a horse race bet.

Q. How do you determine it to be a horse race bet?

A. Because it has A. J. Kahn's signature on it.

Q. Well, it is only in pencil.

A. Well, I can't help it.

Q. The next one is Exhibit No. 20. Now, here is a check that is dated March 4, 1954, to "Cash" for $100, and it is endorsed "A S Manze." A. S. Manze, who is that? A. I don't know the name.

Q. You don't know that he is a bookmaker?

A. No. I don't know the man.

Q. May I just interrupt to ask you this: you know your way around that particular area, you have been going [95] there for many years in that few blocks in there, haven't you, around the Club Royal?

A. Yes, at times. Not always. At times I have dropped around there.

Q. When you are back from sea, you spend a lot of time there, don't you?

A. I do. I spend quite a bit of time there.

Q. And the bookmakers go and come in all those places, don't they?

A. Well, yes, there are bookmakers around that corner.

(Testimony of Hubert Joseph Ursich.)

Q. And you never knew how it was that his name got on this check, and you never knew this man Manze? A. I don't know him.

Q. You know Tex Cook, don't you?

A. I know Tex, but I don't know his last name. Yes, I know Tex. Whether it is Cook or not, I don't know.

Q. Stand up, Mr. Cook. You know this man who has on a reddish tan coat, don't you?

A. I don't know that man.

Q. You don't know him?

A. No. You are mistaken. There is nothing to refresh my mind.

Q. The next check, I believe, is the same situation. This check is Exhibit 21 for $200, endorsed by A. S. Manze. The answers, I take it, would probably be the same? [96] A. Yes, they would.

Q. You don't know such a party as being a runner for Tex Cook? A. No, sir.

Q. Can you explain to me how it happens, if you gave these two exhibits to Mr. A. J. Kahn and his name doesn't appear on them, that you picked these out as being bets with A. J. Kahn?

A. I don't know what he done with the checks after he got them.

Q. Well, that isn't the question. How do you know that you gave these two checks to Mr. A. J. Kahn for bets and his name doesn't appear on them?

A. Because I don't know this Manze. It couldn't have gone any other place at the time.

(Testimony of Hubert Joseph Ursich.)

Q. And because you don't know Manze, you attribute it to a bet with Kahn?

A. That is correct.

Q. The next check is Exhibit 22, and that is for $290, March 6, and that is made out to "Cash" and endorsed "J J DeKyser"? A. Yes.

Q. You know him?

A. I know him now; I did not know him at the time.

Q. You know him as a bookmaker? [97]

A. Yes, I know him now, but I didn't know him at the time.

Q. Don't you recollect that you gave Mr. DeKyser this check? A. I know I didn't.

Q. You gave it to whom? A. To Mr. Kahn.

Q. To Mr. Kahn. And the endorsement, do you know why Mr. DeKyser's name appears on here and not Mr. Kahn's? A. I do not know.

Q. And Exhibit 23 of March 6, $260, that says on the back, "Pay to the Order of the United States National Bank of San Diego, California, for Deposit Only Club Royal." Who did you give that to?

A. Mr. Kahn.

Q. That wasn't intended by you to be given to the Club Royal at all? A. No, sir.

Q. May I have just a minute?

The next exhibit, Mr. Witness, is Exhibit No. 25, which again is a check for $200, and it is endorsed on the back "A S Manz A S Manze," twice. You say that you gave that to Mr. Kahn?

(Testimony of Hubert Joseph Ursich.)

A. I would say so.

Q. Why? [98]

A. Because I know no A. S. Manze.

Q. That is the only reason you say you gave it to him? A. That is true.

Q. Then, the next check is Exhibit No. 26 which is for $100, March 12, and that is endorsed "Yale Kahn." It doesn't have "Club Royal" or anything on it. Do you remember that particular check?

A. It must have been a bookmaking check.

Q. Well, I know, but with whom were you bookmaking? A. Mr. Kahn.

Q. Why would you give it to Yale, then, if you were bookmaking with his father?

A. Yale, the nephew.

Q. The nephew, why didn't you give it to him?

A. Well, Yale was the manager of the Club Royal at that time.

Q. Well, then, was Mr. Kahn (indicating) around at that time? A. Yes.

Q. I don't quite follow you, why you would give a check?

A. Well, in several instances, as I gave a check to Mr. Kahn, if they had money in the till, he would go over there to the till and cash it, the check, right at the till, [99] in several instances.

Q. Well, then, I take it that you did get cash in many instances, with one of these checks, you got cash?

A. I told you how much cash I got when I needed cash.

(Testimony of Hubert Joseph Ursich.)

Q. Maybe I am getting you confused or you are confusing me, I don't know, but here is what I want to get at: here is a check which is Exhibit 26, which is for $100. Now, it is endorsed "Yale Kahn," and I am trying to find out how you decided that this check or the money was given to Mr. A. J. Kahn for a bet?

A. Because if I wanted cash, I would have taken a check like for $15.00, $5.00 or $20.00, but when I wanted cash, I did not cash a check for $100 unless it was to pay a bill for a horse racing bet, and the only one I was betting with in that kind of money was Mr. Kahn.

Q. So you just recall that because it was that amount of money, that it was a bet with Mr. Kahn, is that right? A. That is right.

Q. And the next check is Exhibit No. 27, and that check is for $450, March 16, 1954. It is endorsed by Mr. "Joseph"—let me see if I can read this name—"F. Geraci." G-e-r-a-c-i. Who is he?

A. I do not know.

Q. Well, Mr. Kahn's name doesn't appear on here. Can you explain that, why? [100]

A. I cannot. I took exception to that check.

Q. You took exception to it?

A. That is right. I cannot explain that check.

Q. You mean by exception, you cannot place it?

A. I can't place that check.

The Court: Is that Exhibit 27?

Mr. Carr: Yes, your Honor, No. 27.

Q. Now, the next check is Exhibit No. 28, which

(Testimony of Hubert Joseph Ursich.)

is a United States National Bank check. It is called "For Counter Use Only Not Negotiable," signed by you, and with no endorsement. Now, do I understand that you cashed it, got the money on this?

A. May I see that check, please?

Q. Yes.

A. Yes, sir. This was given to Mr. Kahn.

Q. That check was given to Mr. Kahn?

A. Yes, sir.

Q. Now, Mr. Witness, please look on the back and you will see——

A. There is no endorsement on it.

Q. There is no endorsement on it?

A. No, sir.

Q. Well, this says on the edge here, and let me just point it out to you, "For Counter Use Only Not Negotiable." That is a counter check. [101]

A. It is a counter check, yes, sir.

Q. Yes, that is right.

A. Yes, sir.

Q. How could Mr. Kahn have gotten that and how could it have been cashed?

A. No. I will retract that. I will retract that.

Q. Well, what about it?

A. I will retract it.

Q. You are wrong? A. I was wrong.

Q. So, you didn't give him that check?

A. No, I didn't give him this check.

Mr. Carr: The next checks are as follows. Will you pardon us for just one moment, please, your Honor?

(Testimony of Hubert Joseph Ursich.)

(A short intermission.)

Q. (By Mr. Carr): Mr. Witness, regarding your testimony about Exhibit 29, which is a check dated March 17, 1954, made out to Walker J. Atwell for $1000 and signed by W. H. Babcock, I understood your testimony was that you gave that to Mr. A. J. Kahn, is that correct?

A. Yes, sir.

Q. And that was for a bet? A. Yes, sir.

Q. Now, I want you to look on the endorsement here. You see it is endorsed by Atwell? [102]

A. Yes.

Q. And then, don't you remember that you took that check to the bank and the bank wouldn't cash it?

A. No, sir. I never took this check to the bank.

Q. Don't you recollect that that check went down to the bank and they refused to cash it?

A. No.

Q. And that then it was taken over to Kay Marcos at the Texas Liquor Stores? Do you notice her name on it? Look on the back.

A. Yes, but I don't know how it got to the Texas Liquor Store.

Q. Do you know Kay Marcos?

A. Yes, I know Kay Marcos—I know of her.

Q. It is still your testimony that you gave that check as a bet to A. J. Kahn?

A. Oh, absolutely.

Q. And you never heard anyone say that the

(Testimony of Hubert Joseph Ursich.)

bank refused to cash that check? A. No, sir.

Q. Now, the next exhibit is No. 30, I believe, Exhibit No. 30, and that is a check for $460 to "Cash," and it is endorsed on the back "A E Anderson." It is dated March 18, 1954. Is that one of the checks Mr. Anderson brought you the cash back on? [103]

A. As long as it has Mr. Anderson's signature alone, I take exception to that check.

Q. You mean you retract what you previously said?

A. I retract what I said about that check.

Q. Then, if I showed you any other exhibits here with the name just A. E. Anderson on them.

A. No. There are a great majority of the checks that I am very positive of, but if there is the slightest doubt, I will just have to leave it at that.

The Court: What is the exhibit number of that check?

Mr. Carr: This exhibit number is Exhibit No. 30, your Honor.

Q. Well, at the time you made your answer, Mr. Ursich, you realize that you were testifying that you had given this check to Mr. Kahn as a bet, didn't you?

A. There are a few checks. That would be one—you pointed it out to me, sir—where his signature would be on there alone.

Q. All right, sir. Now, on Exhibit No. 31, it is to "Cash," March 18, 1954, for $480.00, and it is endorsed on the back "Pay to the Order of the

(Testimony of Hubert Joseph Ursich.)

United States National Bank of San Diego, California, for Deposit Only Club Royal." What did Mr. Kahn have to do with that?

A. That is a bookmaking check.

Q. Well, can you explain to me why Mr. Kahn's name [104] doesn't appear on it?

A. I don't know, sir.

Q. Now, finally, Exhibit No. 32, which is a check, March 26, 1954, for $420.00. It is endorsed by "John Zakarian."

The Court: There is no testimony on that.

Mr. Carr: There was none on it, your Honor.

The Witness: No. I can't account for it.

Mr. Carr: I am sorry. Now, a few other questions. I am sorry to say, I mixed these up.

Q. About this Las Vegas bet on Imbros in the entry, as I understand your testimony, you went over to the Club Royal, and you wanted to make a bet on Imbros, is that right? A. No, sir.

Q. You got in touch with Yale, is that correct?

A. No, sir. I wanted to make a bet on the A Entry.

Q. On the A Entry? A. Yes.

Q. Which included Imbros?

A. That is right.

Q. And you went to the Club Royal?

A. Yes, sir.

Q. And who did you get in touch with?

A. With Mr. Kahn.

Q. When you say Mr. Kahn, which Mr. [105] Kahn? A. Mr. A. J. Kahn.

(Testimony of Hubert Joseph Ursich.)

Q. Mr. Kahn, I thought, was at Las Vegas?

A. I spoke to him on the phone.

Q. Whom did you first get in touch with?

A. Oh, Mr. Zimmerman.

Q. Mr. Zimmerman? A. That is right.

Q. And did you see Mr. Yale Kahn at all?

A. Yes, he came in after I spoke to Zimmerman. He entered the office.

Q. You told Mr. Yale Kahn you wanted to bet on the Entry? A. Yes, sir.

Q. You told him you wanted to make a thousand dollar bet? A. That is right.

Q. Did you ask Mr. Yale Kahn to book the bet?

A. Mr. Yale Kahn stated that he would book the bet, and Mr. Zimmerman told Yale Kahn, "You keep out of this. Your dad has left me in charge." And he said, "I am going to call him in Las Vegas."

Q. So then you called Las Vegas?

A. That is right.

Q. And Yale talked to his father and said you wanted to make a thousand dollar bet? And to see if he could [106] lay it up in Las Vegas or that he didn't want his dad to lay it in Las Vegas, was there talk about that at all?

A. No, not that way.

Q. Was anything said about you putting up money? A. Yes.

Q. Did you put up money?

A. Yes, sir. Kahn said, "I will carry you

(Testimony of Hubert Joseph Ursich.)

$500.00; and the $500.00 that Yale will take, give him the money."

Q. Yale got $500.00? A. Yes, sir.

Q. How, cash or check? A. Check.

Q. Do you have the check? A. No, sir.

Q. You say it was destroyed?

A. I do not know. The last I saw it, it was in Yale's possession.

Q. How about the other $500.00 which was to go to A. J. Kahn? A. I didn't pay that.

Q. You never delivered that money to him at all?

A. No. I never delivered that money at that time.

Q. Imbros was scratched, I think you said?

A. Yes.

Q. But the Entry still run? [107] A. Yes.

Q. Where did that race occur, do you know?

A. No, I don't even remember the location.

Q. When was the first time you made an effort to collect this bet? A. Monday morning.

Q. Didn't you see Yale before you saw Mr. A. J. Kahn?

A. Yes, but with no effort to collect the bet. He just came up to us as we were to have dinner.

Q. Isn't it a fact that you went to Yale and you tried to collect from him, first? A. No, sir.

Q. You didn't ask him for anything?

A. No, sir.

(Testimony of Hubert Joseph Ursich.)

Q. You were looking solely to A. J. Kahn for the payment of the debt?

A. No. You make the point a little oblique there. I wasn't asking Yale, because it wouldn't be considered too good etiquette to ask that same day, when I myself have had anything coming from those people and go back to any bookmaker and say, "Pay me right now."

Q. But who were you looking to to pay you?

A. I was was not looking for anybody until Monday.

Q. Who did you expect to pay you?

A. I expected Mr. A. J. Kahn to pay me half and I [108] also expected Yale to pay me half.

Q. Then, as I understand it, Yale was betting part of the bet? A. Yes, he was.

Q. And you gave him $500?

A. That is correct.

Q. And it was a check? A. Yes.

Q. And you didn't put up any $500 for the father? A. No, sir.

Q. You recall having a telephone conversation, you say, with Mr. A. J. Kahn? A. Yes.

Q. He was up in Las Vegas, wasn't he?

A. Yes.

Q. Yale got him on the phone, didn't he?

A. No. Yale tried the Flamingo Hotel, and after he couldn't locate his father there, Zimmerman said, "I know where he is at, because I spoke to him last night." The number I have forgotten just now, and

(Testimony of Hubert Joseph Ursich.)

he called and I heard Zimmerman talking to Mr. Kahn.

Q. I thought Yale put you on the phone?

A. No. Yale might have put me on the phone after he was through speaking with his father, but it was Mr. Zimmerman that got Mr. Kahn on the phone. [109]

Q. You had the telephone conversation with Mr. A. J. Kahn, and at that time you told him you would like to have him lay a bet of a thousand dollars? A. Yes.

Q. And you intended he would lay your thousand dollars up in Las Vegas?

A. No. I hadn't intended it.

Q. Couldn't you get a thousand dollars laid at San Diego? A. I asked Mr. Kahn——

Q. I am only asking you, couldn't you get a bet of a thousand dollars laid at San Diego, with any other bookmaker?

A. No. I would hardly think of some that I would trust.

Q. Then, why did you feel it necessary to call Las Vegas?

A. Because Mr. Zimmerman, who was in charge when I wanted to bet a thousand dollars, on this A Entry, stated that Mr. Kahn told him emphatically that he could not take more than seven or six hundred dollars on any given race and he would have to call him and get his permission.

Q. Isn't it a fact, Mr. Ursich, that you wanted Yale to call, you spoke to Yale Kahn and said, "I

(Testimony of Hubert Joseph Ursich.)

have a good tip on a horse race and I would like to lay a bet down of a [110] thousand dollars. Call up your dad at Las Vegas and see if he won't place it."? A. No.

Q. That didn't occur? A. No, sir.

Q. And isn't it a fact that you didn't have the money? A. No, sir.

Q. And isn't it a fact that Mr. Kahn told you on the telephone that you would have to wire him the money before he would lay it up there for you?

A. No, sir.

Q. That didn't occur? A. No, sir.

Q. Now, then, afterwards, on Monday morning, you went around to see Mr. A. J. Kahn to collect money, is that correct? A. That is correct.

Q. Had you put up your $500 at that time?

A. No, sir.

Q. Mr. Kahn told you he would carry you for the $500, did he?

A. Yes. That has been done many times in the past.

Q. Did he say he would carry you for the $500?

A. Yes, "Give Yale $500 and I will take $500."

Q. But you did not put up the $500 that he was supposed [111] to carry you on, is that right?

A. Well, sir; I will tell you, on that particular day, up until the bet upon the A Entry, which I believe was the seventh race, I had won every race and I believe I was ahead and quite a ways ahead of the book, and I didn't have to put up the $500 to Mr. Kahn.

(Testimony of Hubert Joseph Ursich.)

Q. Then, why did you put up the $500 with Yale, if you had money coming?

A. Because that was separate. I didn't have any money coming from Yale.

Q. Well, does Yale book down there? Is Yale a bookmaker?

A. Yale has bet with me on more than one occasion.

Q. He has? A. Yes, sir.

Q. Is he a bookmaker? A. Well——

Q. You know this fellow Boots DeKyser, don't you? A. Yes, sir.

Q. Do you recollect telling Mr. Julius Kahn—Do you know Julius Kahn? A. Yes, sir.

Q. Do you remember after Mr. Kahn told you that he didn't owe you this money—Mr. A. J. Kahn told you that, didn't he? [112]

A. On Monday morning?

Q. Yes, sir.

A. Yes, sir.

Q. And he told you he wasn't going to pay you any, is that right? A. That is correct.

Q. Did he tell you at that time that one of the first things when he checked on the horse was that he found it was scratched and that concluded the matter and that following the telephone conversation, you never even sent up any money?

A. No, sir.

Q. He didn't mention those two items?

A. No, sir. He mentioned the fact that one of

(Testimony of Hubert Joseph Ursich.)

the horses in the entry was scratched and that was the reason he wasn't going to pay me any money.

Q. About that time you became pretty angry?

A. No, sir.

Q. You never got angry?

A. No. He was the one that was angry.

Q. That is when he pulled a gun?

A. That is right.

Q. Neither one of you were angry, isn't that right?

A. I never was angry. I never lost my head at all. [113] I was afraid he would have a heart attack. I just left.

Q. Up to this point you and Mr. Kahn had been very friendly, hadn't you? A. We had, yes.

Q. You had been a customer around there before and were in and were out? A. That is right.

Q. And up to that very moment, you were friends, is that correct? A. That is correct.

Q. And you didn't get angry with him at that particular time?

A. No, not actually to lose my head. I didn't like it, but I didn't lose my head, no, sir.

Q. Just out of the clear blue sky, he flared up and pulled a gun out of the desk drawer?

A. That is right.

Q. Do you know who Julius Kahn is?

A. Yes, sir.

Q. And didn't you talk with him about this alleged event?

A. Julius called me to come to his office.

(Testimony of Hubert Joseph Ursich.)

Q. He called you? A. Yes.

Q. Did you know Julius, then? [114]

A. Well, I don't recollect exactly, but I met him at the office of the Texas Liquor Stores.

Q. Well, don't you remember that you and Atwell went to see Julius together?

A. Atwell and I never went to see Julius together.

Q. And do you recollect your telling him that Yale Kahn had refused to pay the bet; now, Yale Kahn, that Yale had refused to pay the bet?

A. You are making a continuation out of that, that has me confused.

Q. All right. Let us get back and get it straight. I am asking you, now, if you did not tell Julius Kahn that Yale Kahn had refused to pay the bet?

A. That not only Yale Kahn had refused to pay the bet, that A. J. Kahn had refused to pay the bet.

Q. Now, I will ask you if it isn't a fact that at that time that you demanded that Julius tell Yale, "Pay the bet" or otherwise you would try to get the United States on A. J., the father?

A. No, sir. I demanded nothing when I saw Julius Kahn, I demanded nothing.

Q. You didn't make that statement?

A. No, sir.

Q. Now, isn't it a fact that you and Atwell also told Julius Kahn that if Yale or A. J. didn't pay the bet, [115] you were going to the Internal Revenue Bureau and complain about it and cause A. J. trouble?

(Testimony of Hubert Joseph Ursich.)

A. That is not a fact. In the first place, Atwell and I didn't have with Julius Kahn together a conversation.

Q. Isn't it a fact that you said that if either Yale or his father didn't pay it, you were going to the Bureau of Internal Revenue and cause him trouble? A. That is not true.

Q. You did go, didn't you?

A. I did go, sir.

Q. Nobody called you and asked you to come to the Bureau, did they? A. No, sir.

Q. You went voluntarily, didn't you?

A. Yes, sir.

Q. And how soon was it after you had these interviews with the Kahns, I am talking now about the time you were trying to collect this bet?

A. Oh, I don't know exactly, but I imagine that from the time the bet was placed up until the time I went to the Internal Revenue was about one month.

Q. Isn't it a fact, sir, that first you told Julius Kahn that you knew that A. J. had had trouble with the Internal Revenue Bureau and that you knew what a complaint would do? [116]

A. No, sir.

Q. Didn't you tell A. J. that himself, first?

A. No, sir.

Q. You never made any threats to him at all?

A. It never entered my mind.

Q. You remember when A. J. was in the hospital? A. Yes, sir.

Q. Do you recall that while A. J. was in the

(Testimony of Hubert Joseph Ursich.)

hospital, you and Atwell went to Julius and again demanded that either Yale or A. J. pay the bet?

A. Atwell and I never went to Julius.

Q. Not at any time? A. No, sir.

Q. But you made the demand on Julius, didn't you? A. No, sir.

Q. Well, why did you talk to Julius?

A. Because Julius, through Atwell, called that he wanted to see me. Mr. Atwell called me up one night and said, "Julius Kahn would like to see you." And I said, "Well, I don't want to see him, because there is just no sense in me going to see him, I have no business with Julius."

Mr. Atwell said, "He wants to see you. He is a nice fellow, and you should go to see him." [117]

And I went to see Julius Kahn, and the only thing that we arrived at out of this conversation with Julius Kahn was the fact that Julius told me if he would let me have half of the money, would I forget about this thing and call it square, and I told him, "No, sir, I could not do that."

Q. You said you believe you knew Boots DeKyser? A. I believe I know him.

Q. You knew him to be a bartender and bookmaker? A. I know him to see.

Q. Don't you recollect that you sent him to see Mr. A. J. Kahn to try to collect this bet?

A. That is not true.

Q. Never at any time?

A. Never at any time.

Q. Do you ever recollect making the statement

(Testimony of Hubert Joseph Ursich.)

that if you didn't collect this money, you were going to make it so hot that the whole town would have to close up down there? A. No, sir.

Q. You never did? A. No, sir.

Q. You didn't know that Boots DeKyser contacted A. J. Kahn and said to him that he could still settle the case for $10,000 and that you could be called off the Bureau of Internal Revenue?

A. No, sir. [118]

Q. You did not know that?

A. I knew after that incident happened, but I never knew it at the time. I heard about it after.

Q. Well, you were willing to withdraw your complaint before the Bureau if you could get that money, $10,000? A. That is not true.

Q. You didn't continue to try to get the $10,000?

A. No, sir.

Q. You gave it up entirely?

A. I didn't want it.

Mr. Carr: May we have just one second, if it please your Honor?

I have a few more questions. I have a small series of questions.

Q. During the period of 1953 and 1954, don't you recollect sitting there at the bar of the Club Royal with bookmakers seated around you during the day, while you were there from time to time, making bets with bookies, bookmakers?

A. Oh, I have made bets with other bookmakers outside of A. J. Kahn; I have done that.

Mr. Carr: I move to strike the answer as to

(Testimony of Hubert Joseph Ursich.)

other bookmakers besides A. J. Kahn, as not responsive and as a conclusion.

The Court: It may go out.

Q. (By Mr. Carr): I am asking you simply this, that [119] during 1953 and 1954, when you were back from sea, you were hanging around the Club Royal quite a bit, weren't you?

A. Yes, I spent quite some time there.

Q. And usually what time of the day did you get there?

A. I don't think there is any particular time of day. I used to come in there in the evening sometimes with my wife after a ball game to have dinner and we went home, and I used to come in there in the daytime myself.

Q. During the day is when the betting on the horses would take place? A. That is right.

Q. That is a pretty large place, I mean it is quite a good-sized place, isn't it?

A. I wouldn't say it is too big.

Q. How many tables?

A. I don't know; I never counted them.

Q. 10 or 15 tables?

A. I don't think they have that many. It isn't too large a place as bars go.

Q. As bars go?

A. It is just a medium-sized place.

Q. Does it serve food? A. Yes, sir.

Q. Steaks?

A. Well, I don't know, I don't remember. Hamburgers. [120]

(Testimony of Hubert Joseph Ursich.)

Q. Well, it serves food, anyway? A. Yes.

Q. This thing you referred to as an office is an open space where people go in and out of the office?

A. No. The office has a door that has a part metal coating on it with a lock on it.

Q. It is locked? A. Oh, yes.

Q. And you sat around there having drinks? I don't mean by that that you were drunk, but you drank and sat there and made bets, then, during the day time, is that right?

A. Yes, I have had drinks there and made bets, too.

Q. When you made a bet with a bookmaker, would you tell him, "You got my $50.00 on this"?

A. Sometimes fifty, sometimes twenty.

Q. And some other bookmaker would speak up and say, "Do you want an extra $50.00?" And you would say you wanted it?

A. It happened, but very seldom.

Q. Where was Mr. A. J. Kahn during those periods?

A. He would probably be in the office.

Q. As a matter of fact, you were around there a whole lot, weren't you, a considerable part of the time, when you were back from sea? [121]

A. When I was back from sea, I was there quite a lot.

Q. And you were making horse bets?

A. I imagine.

Q. You were? A. I were.

Q. And you sat there with a form sheet?

(Testimony of Hubert Joseph Ursich.)

A. No, very seldom, because they didn't like anybody to read a form sheet at the building because of the vice squad.

Q. You went over the form sheet the night before? A. Yes. I played the horses.

Q. So you went over that pretty well?

A. Pretty well.

Q. So you knew the bets you were going to make that day by this publication?

A. I don't know. You can think about betting on a horse all night and then change your mind the next day before the race.

Q. But you would take along parts of these form sheets and give it the once over, did you not?

A. Not at the Club Royal.

Q. Before you got there?

A. No. It is very seldom I bought a form sheet. The newspaper was good enough for me.

Q. There were races at a certain time of the year [122] going on all across the country?

A. Yes.

Q. Starting with the races at Miami?

A. Yes.

Q. So you had seasons starting at Florida, going to New Orleans, and coming on to the State of California?

A. Yes, but it was very seldom I ever did that. It was very few occasions I have ever bet races outside of the local California tracks that were running.

(Testimony of Hubert Joseph Ursich.)

Q. This was sort of a bookmaker's alley around there, isn't it?

A. Well, I can't draw any comparisons.

Q. What was the greatest number of bookmakers that you saw at the Club Royal at any one time?

A. Well, I don't know. Sometimes you could see five or six fellows that you would judge to be bookmakers.

Q. And you saw in there from time to time three or four fellows that you also bet with, isn't that right? A. That is right.

Q. So a fellow would be sitting there having a drink or you would be having a drink, you would be talking about the race maybe at New Orleans or the race coming up in another place, and you would say, "Put me down for fifty, twenty, or thirty," is that right?

A. Not very often, not very often. For the last three [123] or four years, it was on a rare occasion where I would place a bet with any other bookmaker.

Q. And were there other people making bets with Mr. Kahn, too?

A. That I do not know. I can only speak for myself.

Mr. Carr: I see. No further cross at this time.

Mr. Dunn: I have a few questions on redirect at this time.

(Testimony of Hubert Joseph Ursich.)

Redirect Examination

By Mr. Dunn:

Q. I would like to understand clearly your testimony on one arrangement.

I believe that you testified on direct examination that you did give to Mr. Zimmerman on the Saturday in March of '54 a $2300 check?

A. That is correct.

Q. And then, in addition to that, you made out one other check? A. Of $500.

Q. And you gave that to whom?

A. To Zimmerman, to deliver to Vale Kahn at the barber shop.

Q. And the second, the $500, was on the books?

A. That is right.

Q. Now, as I understood in the questions that counsel [124] asked you—I may be wrong about this, but my recollection is—did you ever deliver $500 to A. J. Kahn when he was referring to the incident?

A. No; I did not deliver because he was at Las Vegas and I was ahead of Zimmerman for the day. There was no necessity for me to deliver to him or to post for that bet.

Q. Now, you testified that in some of these cases a check would be cashed and the money returned to you. Now, in those cases, what did you do with the cash that you received?

A. Sir, to the best of my ability, the checks that I have brought out here were in the great majority

(Testimony of Hubert Joseph Ursich.)

checks that I had cashed to bet A. J. Kahn on horses.

Q. When did you actually pick the checks out?

A. I picked them out approximately a little over a year ago.

Q. Well, let me ask you this: did you pick them out before you first went to see the Internal Revenue Service? A. No, sir; no, sir.

Q. Did you do it shortly after that time?

A. Yes, sir.

Q. So that you saw the Internal Revenue Service, roughly, you said, one month after this Imbros bet?

A. That is right, the Entry.

Q. The Entry bet. And how long after you first saw [125] the Internal Revenue Service did you make selection of the checks?

A. Gee, it is kind of rough for me to say, but it would be a couple of months, probably a month or two, something like that. I just can't tell you exactly on that.

Q. Well, you had the checks at the time when you were interviewed by Mr. Hoopman, did you not?

A. Yes. He asked me to bring them.

Q. And that was sometime in 1954?

A. Yes, sir.

Q. Now, a question was asked of you, why did you have Yale Kahn endorse a check, and I believe that you were referring to five or six. Did you ever have an endorsement placed on those checks?

A. Why did I have Yale Kahn endorse the check?

Q. Yes; counsel asked you the question.

(Testimony of Hubert Joseph Ursich.)

A. Well, sir, if I gave a check to A. J. Kahn, then I lost track of it, I didn't know where it went after that.

Q. Well, did you have the endorsement placed on the check yourself?

A. Before Yale Kahn endorsed it?

Q. No. Did you have the endorsements placed on the checks? A. No, sir.

Q. And you made the checks out to the [126] payee? A. Cash.

Q. These were all made out to cash, were they not? A. Yes.

Mr. Dunn: May I have just a moment, your Honor. I want to find a particular exhibit here.

Q. I also place before you Government's Exhibit 26 for identification, which you will note bears an endorsement "Yale Kahn" on the back. From counsel's question and your answer, it wasn't clear whether or not you were stating that you gave that check to Yale Kahn or to the defendant, A. J. Kahn.

A. Well, to the best of my knowledge, sir, the check went to A. J. Kahn.

Q. And is it your testimony, then, that that is a check which placed a bet with A. J. Kahn?

A. Yes, sir.

Mr. Dunn: At this time, if the Court please, the Government would like to offer in evidence those checks which have been identified as bets, and I will take them serially. I believe that we can offer at this point Exhibits Nos. 1 through 16.

The Court: You are offering Nos. 1 through 16?

(Testimony of Hubert Joseph Ursich.)

Mr. Dunn: Yes, your Honor.

The Court: They will be received. [127]

(Said documents were received in evidence as Government's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.)

Mr. Dunn: Then we will pass No. 17 and offer exhibits Nos. 18 through 26.

The Court: They will be received.

(Said documents were received in evidence as Government's Exhibits Nos. 18, 19, 20, 21, 22, 23, 24, 25 and 26.)

Mr. Dunn: Now, if I may have No. 28.

Q. As I understand your testimony with reference to Government's Exhibit 28 for identification, you now state that you cashed that counter check at the United States National Bank? A. Yes, sir.

Q. And what did you do with the proceeds, the cash that you got?

A. Well, probably bet on the horses.

Q. Well, is it your testimony only that you probably did, or do you know whether or not you did?

Mr. Carr: I submit that that is what he said.

A. I did.

The Court: If you are objecting, make an objection.

Mr. Dunn: I heard an answer.

Mr. Carr: Very well. Go ahead. [128]

(Testimony of Hubert Joseph Ursich.)

Q. (By Mr. Dunn): And with whom did you place the bet?

A. Well, in those days, as I was betting almost exclusively with A. J. Kahn, it is evident, with him.

Mr. Dunn: I make the offer at this time of Government's Exhibit 28.

Mr. Carr: I object to that, your Honor, on the ground that he testified on cross-examination that he did not take out that money to bet with A. J. Kahn.

The Court: The objection is sustained.

Mr. Dunn: And at this time we will offer Government's Exhibit 29 which is the Babcock-Atwell check which the witness testified he did give him.

The Court: It will be received.

(Said document was received in evidence as Government's Exhibit 29.)

Mr. Dunn: And we will offer Exhibit No. 31.

The Court: It will be received.

(Said document was received in evidence as Government's Exhibit No. 31.)

Mr. Dunn: I have no further questions of this witness.

Mr. Carr: Just a moment. By the way, may I have just one question or two.

(Testimony of Hubert Joseph Ursich.)

Recross-Examination

By Mr. Carr:

Q. You went to Mr. Hoopman, didn't you? [129]

A. Yes, sir.

Q. You knew that Mr. Hoopman had worked on the previous case against Mr. Kahn; is that right?

A. No, sir. I first went to the Federal Bureau of Investigation, and they sent me to someone else, and then that person sent me in to Mr. Hoopman. I didn't go to Hoopman.

Q. Mr. Hoopman himself told you that he had worked on the case previously against Mr. Kahn; is that right? A. I do not remember.

Mr. Carr: No further questions.

The Court: Did you ever win, Mr. Ursich?

The Witness: Oh, yes; but I never win as much as I lose.

The Court: Well, when you did win, how were you paid off?

The Witness: I was paid off in cash.

The Court: By whom?

The Witness: By Mr. Kahn.

The Court: Were markers used?

The Witness: No, sir; no, sir. Our word was good.

The Court: He never used markers?

The Witness: No, sir. There were times that he owed me as much as $1800 that I didn't collect, and I played it out, lost it. [130]

The Court: I understand that it is your testi-

(Testimony of Hubert Joseph Ursich.)

mony that on the Saturday when you say you bet the Entry, one horse was Imbros?

The Witness: Yes.

The Court: Who was the other, Determine?

The Witness: Decorated.

The Court: Decorated.

On that date, did I understand that you gave a check for $2300 to Mr. Zimmerman?

The Witness: Yes, sir.

The Court: And you gave a check for $500 to Mr. —this young Kahn?

The Witness: To Yale Kahn; yes, sir.

The Court: What is his name?

The Witness: Yale.

The Court: Yale Kahn.

What was the $2300 for?

The Witness: The previous day's losses.

The Court: Didn't you testify earlier that you were ahead of him at the time is the reason you didn't give him the $500 for that day's bet, that they owed you money?

The Witness: Yes.

The Court: By reason of your earlier winnings?

The Witness: Yes, sir; yes, sir; but——

The Court: Why did you pay them the $2300, then? [131]

A. Because there was a loss on Friday and Mr. Zimmerman told me that my credit was dead until I paid the $2300. So on Saturday, several races before the time to make the Imbros race, I was that much ahead on the book that I didn't have to post

(Testimony of Hubert Joseph Ursich.)

any money for the $500, but the $2300 was still laying in Mr. Zimmerman's possession.

The Court: In other words, you paid off——

The Witness: The previous day's losses.

The Court: ——the $2300 before the race was over?

The Witness: That is right.

The Court: The $2300 check, have you ever received that back?

The Witness: No, sir.

The Court: It was never paid by your bank?

The Witness: No, sir.

The Court: Oh, they didn't cash that check?

The Witness: No, sir.

Mr. Carr: I was going to ask that question.

Q. You don't have the canceled $2300 check?

A. No, sir.

The Court: It never came back and it was never charged to your account?

The Witness: No, sir.

The Court: All right, that is all. We will take a five-minute recess.

(Recess.) [132]

The Court: Do counsel still think this is a two-day case?

Mr. Carr: We have, your Honor, eight or ten witnesses. We will go through them pretty fast, most of them.

Mr. Dunn: I think the rest of the witnesses will be much quicker, your Honor.

The Court: All right.

Mr. Dunn: It may go slightly over. We will finish in three days, I am sure.

Mr. Qualin.

EDDIE QUALIN

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

The Clerk: Give us your full name.

A. Eddie Qualin.

Direct Examination

By Mr. Dunn:

Q. Where do you reside, Mr. Qualin?

A. I live on 4127 Texas Avenue.

Q. Where is that? A. San Diego.

Q. San Diego, and what is your business or occupation? A. A commercial fisherman.

Q. Do you know the defendant, A. J. Kahn?

A. I know A. J. Kahn known as Mr. Kahn. [133]

Q. Do you see him seated here in the courtroom?

A. I do.

Q. And would you indicate to the Court where you see him?

A. The gentleman sitting over there (indicating).

Q. How long have you known the defendant, Kahn?

A. I have known Mr. Kahn since 1947, '48.

Q. Now, on any occasion since that time have you placed bets on sporting events with the defendant?

(Testimony of Eddie Qualin.)

Mr. Carr: I object to this question on the ground it is incompetent, irrelevant, and immaterial. It does not relate to the period covered in the indictment.

Mr. Dunn: I am trying to find a starting point, your Honor.

The Court: Overruled.

Mr. Dunn: Can we have an answer to the question?

A. Yes. I made a lot of bets with Mr. Kahn.

Q. (By Mr. Dunn): When was the first time that you placed a bet with Mr. Kahn?

A. I bet with Mr. Kahn in 1948, baseball.

Mr. Carr: We move to strike that on the ground that this is preceding the time alleged in the indictment. It has no bearing on any issue in this case whatsoever.

The Court: Objection overruled.

Mr. Dunn: It has a bearing certainly on certain issues. [134]

The Court: Objection overruled.

Q. (By Mr. Dunn): Referring now to the period of July 1, 1953, and continuing through June 30, 1954, did you on any occasion during that period place a bet with Mr. Kahn?

A. The last bet I made with Mr. Kahn was in 1953. It was a Saturday before Labor Day in 1953, at Delmar.

Q. And you actually placed the bet at Delmar race track? A. Yes.

Q. Did you place one or more bets on that occasion? A. I placed three bets.

(Testimony of Eddie Qualin.)

Q. And what was the amount of those bets?

A. $300 apiece.

Q. So you placed three $300 bets on that occasion? A. Yes, sir; I did.

Q. Who was present at the time you placed those bets?

A. There was nobody present. There was a boy by the name of Johnnie Duffy who was "giving" me the horses and I was placing them with A. J. Kahn or Mr. Kahn.

Q. Now, on that occasion you were at the Delmar race track? A. Yes, sir.

Q. Why didn't you place bets at the parimutuel window? A. Well, I am a fisherman. [135]

Mr. Carr: I object to it on the ground that it is incompetent, irrelevant, and immaterial as to why he didn't.

The Court: Overruled.

A. I am a fisherman and we get paid—sometimes we are at sea five or six months at a time, and I come in and we hadn't unloaded, we couldn't get paid yet, so I approached Mr. Kahn in front of the Club Royal which is at 3rd and C, and I asked him, "Will you take my action, a bet at the race track?"

He said, "Yes."

So I just walked over to the——

The Court: "Will you take my what"?

A. "Action" or my bets.

Q. (By Mr. Dunn): By that you are referring to the bets you wanted to place at that time?

A. Yes, sir.

(Testimony of Eddie Qualin.)

Q. Had you previously in the period, then, from July 1, 1953, until this day before Labor Day placed bets with Mr. Kahn?

A. From '53 on, I mean that is the last bets I made. I mean I was through.

Q. And did you place the bets the Saturday before Labor Day? A. Yes, sir. [136]

Q. And you, from July 1, 1953, up until the two days before Labor Day, placed other bets with him?

A. I might have, small bets.

Mr. Carr: May I have that answer read?

(Record read by Reporter.)

Q. (By Mr. Dunn): And this Saturday was the last time you placed your bets with him?

A. Yes, sir.

Q. And why was that?

Mr. Carr: I object on the ground it is incompetent, irrelevant, and immaterial as to why he quit. He just ceased betting. It has no bearing on any issue in this case.

The Court: I didn't hear the question.

Mr. Dunn: I said why did he quit, why was that the last time?

The Court: The objection is sustained. What is the materiality of that?

Mr. Dunn: I don't suppose it is very important.

The Court: It may be that he ran out of money or got smart.

Q. (By Mr. Dunn): Now, have you, during the

(Testimony of Eddie Qualin.)

period of time that I have referred to in 1953, seen others place bets with the defendant, Kahn?

The Witness: Was this prior to 1953?

Mr. Dunn: No. During that time that I have mentioned? [137] A. I didn't quite get that.

Q. From July, 1953, on through to the time in September or around Labor Day, did you see others place bets?

A. From the time I made his last bets on which I didn't get paid, I mean I just—I wouldn't have nothing to do with his establishments, never went in any of his places of business, I mean I was just through.

Mr. Dunn: That is not the question.

Mr. Carr: I move to strike the last answer on the ground it is not responsive and not material to any issue in the case.

The Court: The objection is overruled.

Q. (By Mr. Dunn): My question is, have you seen others place bets with Mr. Kahn?

A. I have seen lots of people—however, I have never seen them actually giving the money, but I have seen them coming out and saying that "I have bet a hundred dollars" on this horse, or "I bet two hundred dollars on this horse," or "I bet two hundred"——

The Court:, Just a moment.

Mr. Carr: I move to strike this on the ground that there is obviously no proper foundation laid and it is hearsay.

The Court: It is hearsay as to what they come out and say. It may go out. [138]

(Testimony of Eddie Qualin.)

Q. (By Mr. Dunn): On that occasion, the Saturday before Labor Day, when you were at Delmar track, did you see the defendant, Kahn, go to the parimutuel windows to place bets that you had given him?

Mr. Carr: I object to it on the ground it is a compound, complex question and also asks for a conclusion as to what bets he may have made at the window.

Mr. Dunn: I asked whether he saw it.

The Court: Overruled.

Mr. Dunn: You may answer the question.

A. I never seen Mr. Kahn go to the window. He told me, the words he used were, "You are balancing my books by betting on number 8."

Q. Did he give you parimutuel tickets for the bets that you placed there on that occasion?

A. No, sir. He didn't.

Mr. Dunn: You may cross-examine.

Cross-Examination

By Mr. Carr:

Q. Mr. Qualin, what is your business, fisherman?

A. Yes, sir.

Q. You are a pretty good friend of Ursich, aren't you?

A. Yes; I am—not too good, no, sir; really, I don't know his name. I knew him as "Babe." [139]

Q. You do not work on the same ship, do you?

A. No, sir.

(Testimony of Eddie Qualin.)

Q. You work on the "Sun" something, don't you? A. Jason.

Q. And you weren't at sea during this period of time from July 1, 1953, to September, 1954, I believe counsel referred to?

Mr. Dunn: 1953.

Q. (By Mr. Carr): This was from July 1, '53, to September, 1953. Were you at sea?

A. No. I was at Delmar race. We got in in the latter part of——

Q. The latter part of what?

A. We got in—I had, approximately five or six days before Delmar, we arrived in San Diego.

Q. Well, what do you mean by "before Delmar." before it starts?

A. The last few days of the race track, the last few days of the racing.

Q. You were there the last few days before you left on the ship, is that what you mean?

A. No. I don't think we left—we probably left some time in August.

Q. And when was this that you made these bets with Mr. Kahn? [140]

A. The Saturday before Labor Day.

Q. And you had come back—I don't quite understand you. When did you go to sea?

A. After Labor Day in August.

Q. After Labor Day in August; that couldn't be. Labor Day is in September.

A. Well, I mean in August, the middle of August, some time in the middle of August, we went to sea.

(Testimony of Eddie Qualin.)

Q. So it couldn't have been Labor Day, then, when you made these bets?

A. Yes; I made the bets the Saturday before Labor Day. I remember that definitely.

Q. Now, maybe I am confused. I thought you said that you went to sea in August.

A. Labor Day is—we went some time in September after Labor Day.

Q. And was this just on one occasion that you were down there with Mr.——

A. I made previous bets with Mr. Kahn, I mean in previous years.

Q. I mean at the Delmar track in this particular season.

A. Yes; I just made those few, those bets with Mr. Kahn at that time in 1953.

Q. What? [141] A. In 1953.

Q. You are a pretty good friend of Mr. Kahn's, are you? A. I knew him fairly well.

Q. You used to hang around his place?

A. Yes; I did.

Q. That is at this Club Royal?

A. Yes; I did.

Q. And did you join up in this effort to collect this Las Vegas bet?

A. No, I did not; I never heard anything about it.

Q. This is the first time you ever heard about it?

A. Yes, sir.

Q. And how, do you know, did your name get

(Testimony of Eddie Qualin.)

to the Bureau the first time; did somebody suggest it?

A. Babe and Mr. Hoopman came down on the ship when I was tying the ship up and he asked me to speak to me.

Q. Ursich brought him down to see you, is that right? A. I beg your pardon?

Q. Ursich brought this man down with him?

A. No.

Q. Or came with him?

A. No. Mr. Hoopman was down there when I was tying the ship up, Mr. Hoopman was down on the dock.

Q. Ursich was with him, wasn't he? [142]

A. No; he wasn't.

Q. Had you heard from Ursich just prior to that time? A. No, sir; I hadn't.

Q. You remember making the remark you would help him get these S. B. Jews if it was the last thing you ever did?

The Witness: What was the question?

Mr. Carr: You remember making the remark—read the question.

(Pending question read.)

A. I never heard of it.

Q. I want to ask you, by the way, you are a bookmaker yourself, aren't you?

The Witness: I object. I mean do I have to answer that actually?

(Testimony of Eddie Qualin.)

Mr. Dunn: I think it is an immaterial question, your Honor.

The Court: Sustained.

Mr. Carr: Your Honor, do I understand you sustain an objection to my asking him if he is?

The Court: No; but if you insist upon the question, I will advise him of his Constitutional rights.

Mr. Carr: Well, I am going to insist on the question.

Mr. Dunn: I object to the question, your Honor, as being irrelevant and immaterial. [143]

The Court: Objection sustained.

Mr. Carr: Well, it goes to his credibility, your Honor.

The Court: I don't see where it does. How does it go to his credibility? It doesn't go to his credibility, and you know it doesn't go to his credibility.

You may ask him if he has been convicted of a felony.

Mr. Carr: That is not my purpose at all.

The Witness: I haven't.

The Court: Well, objection sustained.

Mr. Carr: Well, I don't appreciate the Court making the statement that I know it.

The Court: Of course, if the objection had not been made, I would have advised him of his Consitutional rights and, of course, as you well know, he is not required to testify against himself. Of course, you can ask him if he was guilty of an offense.

Mr. Carr: May I address the Court, now?

The Court: Yes.

(Testimony of Eddie Qualin.)

Mr. Carr: I had no intention of deliberately doing something here at all that I didn't think I had a right to do, and I think the remarks of the Court accuse me of doing something with deliberation that did not exist, and I have conducted myself and tried to always in these Courts without being told that I know I am doing something wrong. [144]

The Court: All right, you may ask your questions.

Mr. Carr: Now, I would like to point out, if I may say it, in the Federal jurisdiction, bookmaking is not an offense, and under the Murdock case he cannot claim privilege for a violation in another jurisdiction.

Now, the only ground upon which he can claim the privilege is on the basis of having failed to pay a tax himself.

The Court: The objection is sustained, and you may proceed.

Mr. Dunn: Is Mr. Carr through?

Mr. Carr: No. I am not through.

The Court: Use the Lectern, please, Mr. Carr.

Mr. Carr: I want to consult with my co-counsel a moment, but if your Honor insists——

The Court: You may go and consult with him at any time you care to.

Q. (By Mr. Carr): Were you bookmaking at the time you claim you made these bets?

A. No. I wasn't.

Q. At the track at Delmar, approximately at Labor Day in 1953? A. No. I wasn't.

(Testimony of Eddie Qualin.)

Q. Now, I want to ask you if it isn't a fact that you made the statement to Mrs. Ann Marcos at the Turf Club [145] about a month ago, in the presence of other people, that you would help Ursich get these people if it was the last thing you ever do, referring to the Kahns?

A. No; I didn't. I says, "I hope the man"—these are the exact words I always said, I said, "I hope the man doesn't go to pail, but I hope it will cost him a million dollars," because he can afford it and I got a wife and I got a child, and I had to borrow $20.00 to come up here to Court.

Q. Mr. Qualin, you were subpoenaed by the Government, weren't you? A. Yes; I was.

Q. Now, do you know where Boots DeKyser's place is? A. Yes; I do.

Q. Do you recollect, isn't is a fact that you said in front of a man by the name of Jim Lowery, a bartender, that you expected to help, or words to this effect, Ursich get these Jews if it is the last thing you ever did?

A. I never used the word, Jews.

Q. Well, what did you say?

A. I says, I hope them people, it costs them everything they got.

Q. Is that all you said?

A. That is all I ever used.

Q. You didn't make the remark—— [146]

A. No; I didn't.

Q. ——that you would go to help Ursich get these people?

(Testimony of Eddie Qualin.)

A. In fact, I haven't talked—I talked to Babe maybe two or three times.

Q. I am talking about what you said to Mr. Jim Lowery.

A. I don't know who Jim Lowery is.

Q. You know he is a bartender at Boots DeKyser's place, don't you?

A. I do not. The only bartender at Boots DeKyser's I know is Boots and Johnnie Duffy.

Q. Jim Lowery was, don't you remember, in DeKyser's place, that he was a bartender at the Royal when you made this statement, he was present? A. I don't remember.

Q. You don't remember, but you don't remember making some statement to the effect that you would help—— A. No; I do not.

Mr. Carr: All right. No further questions.

Mr. Dunn: I have no further questions.

The Court: You may step down.

Mr. Dunn: May this witness be excused? He is due to ship out, your Honor.

The Court: Yes; he may be excused.

Mr. Dunn: Mr. Martinolich. [147]

JOHN A. MARTINOLICH

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Give us your full name.

A. John A. Martinolich (M-a-r-t-i-n-o-l-i-c-h).

Direct Examination

By Mr. Dunn:

Q. What is your business or occupation, Mr. Martinolich?

A. Vice president of the Martinolich Boat Building Company.

Q. And where is that located?

A. San Diego.

Q. And that is where you reside, also?

A. Right.

Q. Now, do you know the defendant, A. J. Kahn? A. I do.

Q. And have you on any occasion placed bets with the defendant on sporting events?

A. Directly, no.

Q. Well, "directly, no," do you care to explain that further? A. To what extent?

Q. Well, there is a certain implication from that. Now, I want to give you the opportunity to explain it without [148] my putting the words in your mouth, Mr. Martinolich, so if you will, please explain whether or not you ever at any time placed a bet with Mr. Kahn.

A. There was only one incident that I recall. That was up at the race track and Mr. Ursich and

(Testimony of John A. Martinolich.)

I were up there and had a very bad day with all my money lost, and I tried to cash a check, and nobody knew us up there, so I went over to Babe.

Q. You are speaking of Mr. Ursich?

A. That is right, Mr. Ursich, and asked him if he could cash a check, and he said, "I don't know anyone up here either," but then he bumped into Mr. Yale Kahn and asked him if——

Q. Well, I am only referring to A. J. Kahn, now. Are you going to tell about a dealing with Yale Kahn or with Mr. A. J. Kahn?

A. Well, it will all have to tie in.

Q. All right, proceed. Go ahead.

The Witness: And will you give me the last?

(Answer read by Reporter.)

Mr. Carr: I object to any conversation in regard to hearsay between him and Mr. Yale Kahn.

The Court: The objection is sustained. You just tell us if you had a conversation with Mr. Kahn.

Q. (By Mr. Dunn): Yes; did you have a conversation [149] with the defendant, A. J. Kahn?

A. I didn't but Mr. Ursich did.

Q. In your presence? A. Yes.

Q. And where did this take place?

A. At the track itself.

Q. When was it?

A. Oh, it was approximately 1953.

Q. Well, this was at Delmar?

A. Yes, right.

Q. During the Delmar meet? A. Right.

(Testimony of John A. Martinolich.)

Q. In 1953? A. Right.

Q. What was said on that occasion by Mr. Ursich and Mr. Kahn?

A. Mr. Ursich, he wanted to borrow, I think, a couple of hundred dollars off from Mr. Kahn, and he didn't have it on him. So I know Babe said, "I will get the bet down anyhow."

I said, "Who are you going to go to?"

He said, "I will get hold of Mr. Kahn and he will lay it down for me."

Mr. Carr: I move to strike this on the ground of hearsay, unless it was in the presence of the defendant. [150]

The Court: The objection is sustained. I don't know who he was talking to. First, I understood he was talking to Kahn, and now he said he will get hold of Kahn.

Mr. Dunn: That is correct. I am sorry, your Honor.

Q. Wasn't this conversation between Mr. Ursich, in your presence, and Mr. A. J. Kahn, the defendant? A. No. Mr. Yale Kahn.

Q. We are not interested in that conversation. I thought you said you had one with A. J. Kahn.

A. No; I didn't.

Q. Well, you were present in this courtroom when Mr. Ursich said he placed bets for you with Mr. Kahn, were you not? A. Right.

Mr. Carr: I object to this as incompetent, irrelevant and immaterial and it is cross-examination of his own witness.

(Testimony of John A. Martinolich.)

The Court: The objection is overruled.

Mr. Dunn: And your answer was——

A. Right.

Q. (By Mr. Dunn): And when did those events take place?

Mr. Carr: I object to that.

The Court: Objection sustained. If you refer to that, you will have to ask him the specific questions. He cannot pass on the other witness' testimony. [151]

Q. (By Mr. Dunn): Did you place bets with Mr. Kahn through Mr. Ursich? A. Right.

Q. And when did you last do that?

Mr. Carr: May I interrupt. I move to strike that answer on the ground it is a conclusion and no foundation has been laid.

Mr. Dunn: Well, the foundation, your Honor——

The Court: It is granted as a conclusion. If he made a bet, let him describe how he made the bet, not that he made the bet through him.

Mr. Dunn: Well, you can see I am having a little difficulty.

The Court: Yes; I can see you are having difficulty.

Q. (By Mr. Dunn): Will you tell us, please, Mr. Martinolich how you made the bets, then, in 1953, 1954?

A. In other words, Mr. Ursich, he placed all of my bets that I placed.

Mr. Carr: Well, I move to strike that on the ground it is hearsay as to this defendant.

(Testimony of John A. Martinolich.)

The Court: The objection is sustained, and the motion is granted.

Q. (By Mr. Dunn): Have you placed bets in the period 1953-54 on any occasion?

A. Through Mr. Ursich; yes. [152]

Mr. Carr: I move to strike that on the same ground, your Honor.

The Court: Granted. It will be stricken.

Q. (By Mr. Dunn): Well, have you used the telephone at any time to place a bet?

Mr. Carr: That is objected to as being incompetent, irrelevant and immaterial unless it is connected with this defendant.

The Court: Objection overruled. Of course, it must be connected, but he can't do it all at one time. He has to ask him one question at a time.

Mr. Dunn: May I have an answer to the question, please?

The Witness: On the telephone?

Q. (By Mr. Dunn): Yes.

A. Yes; I made a couple of calls down at the Club Royal.

Q. You called the Club Royal? A. Yes.

Q. And with whom did you speak?

A. I got hold of one of the bartenders there, I guess it was.

Q. Well, on any occasion did you speak to Mr. A. J. Kahn? A. That I do not recall.

Mr. Dunn: May I have just a moment, your Honor? [153]

If the Court please, at this time, I am going to

(Testimony of John A. Martinolich.)

claim surprise and ask for permission to cross-examine this witness, on the ground that I have a sworn statement from the witness in which his testimony is different than that which he is presently giving. Just a moment. I may have to correct myself. Yes; I have a sworn statement on it, your Honor, and we have the ground work of the previous witness who did say he had placed bets for Mr. Martinolich.

The Court: Very well.

Mr. Carr: Well, I want to object to it.

The Court: All right, make your objection. Make the objection.

Mr. Carr: I want to object on the grounds there is not sufficient foundation shown for a claim of surprise, and particularly upon the ground that because the previous witness has testified so, that that doesn't constitute a crime.

Mr. Dunn: Well, but that establishes the fact of agency, which is involved here, your Honor.

The Court: The objection is overruled; you may proceed.

Q. (By Mr. Dunn): Now, Mr. Martinolich, didn't you on July 22, 1954, in the presence of Mr. Gordon Hoopman, the Special Agent of the Internal Revenue Service sitting here at the counsel table, Mr. Walter Leeds, an [154] Internal Revenue Agent, sitting there—and Mr. Leeds, will you rise—and Miss Mary E. Gray, stenographer—will you rise, Miss Gray—make a sworn statement concerning your dealings with Mr. A. J. Kahn?

(Testimony of John A. Martinolich.)

A. Right.

Q. On that occasion do you recall being asked the question:

"Did you during the past two years place any bets with A. J. Kahn on horse racing?"

Mr. Carr: May I ask a question on voir dire, your Honor?

The Court: Yes.

Q. (By Mr. Carr): Mr. Witness, were you furnished a copy of this statement? A. I was.

Mr. Carr: May we see the statement?

Mr. Dunn: All right.

Mr. Carr: So that I will know what you are referring to. Very well. Thank you.

Mr. Dunn: I will rephrase that question, now.

Q. Now, do you recall the question being asked you:

"Did you during the past two years place any bets with A. J. Kahn on horse racing?"

To which you answered:

"Right"?

The Court: Let him see the statement. [155]

Mr. Dunn: I am showing it to him, your Honor.

A. I recall that; yes.

Q. (By Mr. Dunn): Well, was that a true and correct statement?

The Court: I can't hear you. Keep your voice up. I can't hear you.

(Testimony of John A. Martinolich.)

The Witness: I recall that; yes.

Q. (By Mr. Dunn): Was that a true and correct statement when made?

A. I actually don't remember if I made a bet with Mr. Kahn or not personally.

Mr. Dunn: Well, I am asking you this question, whether or not you were stating the truth when you made this previous statement?

A. I always try to state the truth.

The Court: Keep your voice up. I can't hear you.

The Witness: I always try to state the truth.

Q. (By Mr. Dunn): And did you make the further statement in answer to this question:

> "To what extent did you bet with Mr. Kahn —frequently or occasionally?"

And the answer:

> "Very, very little. Very seldom, in other words."?

A. That is right.

Q. And was that the truth at the time that you stated [156] it? A. That is right.

Q. And was the further question asked you:

> "You then would say that your betting transactions with Mr. Kahn were small in amount and occasional?"

To which you answered:

> "Yes, you could; yes."

Is that a true statement?

(Testimony of John A. Martinolich.)

A. I believe so; yes.

Q. It was a true statement when you made it?

A. Right.

Q. And was the further question asked you:

"In other words you would occasionally lose?"

And the answer you gave was:

"Yes; and had to pay him off."

Did you give that answer to that question?

A. Well, your Honor, I must have at the time; yes.

Q. You don't recall at the moment whether you did or not? A. Well, I did, because it's there.

Q. And was the statement a true statement at the time you made it?

A. Yes; I believe it was.

Q. Do you have any doubt in your mind at this time?

A. Well, I never paid Mr. Kahn any money.

Q. Well, were you asked the further question:

"The transactions were then handled on a credit [157] basis, as far as Mr. Kahn was concerned. Is that correct?"

To which your answer was:

"Not with me direct."

Is that correct?

Mr. Carr: That is just the point. May I be heard, your Honor?

(Testimony of John A. Martinolich.)

The Court: Yes.

Mr. Carr: It is obvious. He testified awhile ago that he had dealt with Ursich and from these answers it becomes very clear now, that is, the reason he gave those answers was he had no direct contact with Mr. A. J. Kahn, so I am going to move to strike all these questions and answers relating to this document because I think it has become rather clear.

The Court: The motion is granted.

Mr. Dunn: May I be first heard, your Honor?

The Court: Yes.

There isn't a thing inconsistent with what he said here.

He took the stand and he testified today and when he was asked if he made any bets he said not directly, and then you yourself said the inference is he made them indirectly and asked about them, and the Court would not permit it to go in. [158]

You are reading in testimony that is all hearsay. He wanted to testify he bet through someone else. Now, of course, he has here said the same thing, that he made a bet, which is a conclusion. Whether he laid a bet with this man is a conclusion. He can't testify as to the fact. He testified he made bets through Ursich.

Mr. Dunn: The testimony as to the bets has already been made, and this was in further corroboration of that. Mr. Ursich did say that he had placed bets for Mr. Martinolich, and I was trying to establish those facts.

(Testimony of John A. Martinolich.)

The Court: Well, you can't establish that by taking part of the testimony of this man and part of someone else's testimony and prove that a bet was laid with Kahn, the defendant. This man can't testify—If it was a question as to whether or not Ursich had any money, assuming it was not too remote and it wouldn't be under the circumstances, he could testify that he gave Ursich money, but that is not any testimony at all that this witness laid any bets with the defendant.

Mr. Dunn: Well, there is a further part of this referring to direct bets which I would like to have an opportunity to prove (indicating written statement of John A. Martinolich).

Q. Did you on the occasion previously referred to, [159] in response to the following question,

"It is in your testimony that at no time did you ever place a bet either in person or over the telephone with A. J. Kahn. Is that true or not?" Did you answer,

"By telephone, yes."?

A. There must have been an error there, because all my bets were placed through Mr. Ursich, in their entirety.

Q. So that you now do not agree that this was a correct statement at that time?

A. I will have to retract that, yes.

Mr. Carr: I object to that question on the ground that it is——

The Court: The objection is sustained.

(Testimony of John A. Martinolich.)

Mr. Carr: And may I move to strike the previous question and answer.

The Court: Granted.

Mr. Carr (Continuing): In fact, all his testimony, on the ground that insofar as it relates to bets with Kahn, there is no foundatic . shown.

The Court: By "all his testimony," you are referring to all this testimony with reference to this prior statement?

Mr. Carr: Yes, your Honor, that is correct.

The Court: The motion is granted.

Mr. Dunn: I don't want to prolong the point unduly, [160] but there is one further question I would like to have an opportunity to present here, if I may.

The Court: All right.

Q. (By Mr. Dunn): On the occasion of this statement to the Internal Revenue Service, were you asked the question,

"And in those instances you would ask for"—this was referring to telephone conversations——

"And in those instances you would ask for A. J. Kahn or Abe Kahn?"

To which you answered, "Yes."

Did you make that statement? A. Yes.

Q. And was that a true and correct statement at the time you made it?

A. Well, I don't—I don't believe I ever—talking to A. J. Kahn on the telephone, I don't believe—now, I may have.

Mr. Carr: May I see the previous question?

(Testimony of John A. Martinolich.)

Your Honor, may I ask to see the previous question?

The Court: None of it is material.

Mr. Dunn: Well, your Honor, the point I am trying to make is the telephone conversation. He has denied——

The Court: Counsel, there isn't any of it material and principally because of how you could be surprised. It amazes me when you say you were surprised. [161] His testimony here today is exactly what I would have expected, had I read that transcript of that statement. So I don't see how you are surprised and it has been improper testimony as far as direct examination is concerned.

Mr. Dunn: I may be wrong, Judge, but my understanding was that he had some direct telephone conversations with A. J. Kahn about bets, which would be admissible, certainly.

The Court: Counsel, he has been asked and he testified that he did not and he hasn't been asked as to any direct conversations either here or at the time he made the statement. The closest you have come to it is that he said he called at one time and asked for A. J. Kahn or Yale Kahn.

Mr. Dunn: I beg your pardon, your Honor. A. J. or Abe, which is the same person.

The Court: All right. You may continue.

Mr. Dunn: I have no further questions.

Mr. Carr: May that motion apply to the last question and answer, that they be stricken, if your Honor please?

The Court: Yes. It applies to all of the testimony pertaining to his prior statement.

Mr. Carr: No questions.

Mr. Dunn: May he be excused, your Honor?

The Court: Yes.

Mr. Dunn: At this point, I believe counsel is willing to stipulate to one matter so I can release a witness. [162] There is a Government witness which I would call and I would have to retain him, who would testify, if called, that he searched the records of the District Internal Revenue Service and that a search of those records does not show that during the period July 1, 1953, to June 30, 1954, Mr. A. J. Kahn purchased a gambling stamp; further, that during the months set forth in the indictment as to Counts Two, Three, Four, and Five, that the record has been searched and that no excise tax has been paid or return filed thereon by the defendant A. J. Kahn. I offer that as a stipulation, Counsel.

Mr. Carr: For the period covered in the indictment. We so stipulate. Does that meet with your approval?

Mr. Dunn: I believe so.

The Court: Very well.

Mr. Dunn: Does the Court want to continue at this time? I notice it is 4:00 o'clock.

The Court: We will go ahead a few minutes longer, if you can get rid of another witness.

Mr. Dunn: I believe I can, your Honor.

The Court: Call your next witness; you indicated that you were going to conclude this in two

days. Mr. Carr has indicated he is going to conclude it in two days. It is still difficult for me to see how you folks are going to finish in two days, when in one day you have only finished [163] with two witnesses.

Mr. Dunn: Well, may I state that I had based this on the total number of witnesses that would be called at the outside, which includes our rebuttal witnesses, and I do not intend to make my case in chief nearly that long. As a matter of fact, the case in chief will not take more than an additional hour, I am sure, with cross-examination.

Mr. Carr: Well, if we could continue on for another half hour, I could put my case on, I am sure, I think we can hurry it along, in three-quarters of a day.

The Court: Well, we work until 4:15.

Mr. Dunn: I will call Mary Gray.

MARY E. GRAY

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Give us your full name, please.

A. Mary E. Gray.

Direct Examination

By Mr. Dunn:

Q. Where do you reside?

A. At 4068 Madison Avenue, San Diego 16.

Mr. Carr: May we have a moment?

We are willing to save some time.

(Testimony of Mary E. Gray.)

Mr. Dunn: This is not the previous statement I am referring to, but the statement that Mr. Kahn has made. [164]

Mr. Carr: With Mr. Hervey present?

Mr. Dunn: Yes.

Mr. Carr: Well, I don't think you need to lay any foundation on that at all. If it is admissible, we certainly won't lay any question to it.

The Court: This is what?

Mr. Dunn: I will make a statement to the Court as to what we are offering to prove.

We are offering to prove that in May of 1955, the defendant Kahn appeared before the Internal Revenue Service, before Mr. Hennessy, when Miss Gray was stenographer, and Mr. Leeds was present, and the pending prosecution was discussed with him. In the course of that statement, he made an admission which we are offering at this time, and I was putting this witness on the stand to prove that admission.

Mr. Carr: You don't need to lay the foundation at all. We will stipulate that the statement was given at that time and we will, as a matter of fact, not object to it going in evidence, if counsel wishes to offer it.

The Court: Is it a written statement?

Mr. Dunn: It is a typewritten statement; I was only offering portions of it; I would be glad to submit the written statement or read into the record the portions.

(Testimony of Mary E. Gray.)

The Court: You may read them into the record, if [165] counsel has no objection.

Mr. Carr: I would like for the entire statement to be introduced. I believe I am entitled to it.

Mr. Dunn: I have no objection to that. I would like to read those portions, if I may.

Mr. Carr: That is all right.

Mr. Dunn: And I will offer the entire document and read the portions into the record.

The Court: All right. The entire document will be received in evidence. Now, you can read the portions of it that you wish to read, and Counsel for the defendant may read any portions that he may wish to read.

Mr. Dunn: This is a portion at the bottom of page 6 of the typewritten statement. Mr. Hennessy, who is from the Bureau of Internal Revenue, states:

"I think we have pretty well covered that phase. I might say that the agents have also received testimony to the effect that Mr. Kahn was, at least had close connections with, the bookmaking business prior to the time that the wagering tax law took effect.

"Mr. Hervey: Are you interested in that at this time?

"Mr. Hennessy: I will say this, that that evidence was obtained partly for the purpose of showing that Mr. Kahn did know that there was such a thing as [166] a wagering tax law.

"Mr. Hervey: I am sure Mr. Kahn was aware

(Testimony of Mary E. Gray.)

there was such a thing as a wagering tax law. You knew if you were in the betting business you would have to report your winnings at all times?"

And Mr. Kahn said, "Yes," and then goes on to explain that he has three sons and that they have businesses, and so on. That portion admitting that he knew about the wagering tax law is the portion we are offering here on the question of intent of Mr. Kahn.

The Court: Very well. You may step down.

Mr. Dunn: And I will remove this statement from the files and pass it to the Clerk for admission into evidence.

The Court: Very well.

(Said document was received in evidence as Government's Exhibit No. 33.)

Mr. Dunn: Now, I am not prepared to go further with this this afternoon. I have one more witness, I would like to place one more witness on the stand in the Government's case in chief.

Mr. Carr: May I inquire how much longer you will take so I can plan my case?

Mr. Dunn: As I said, I think an hour would easily do it, with cross-examination.

Mr. Carr: All right. Then we will be prepared to go [167] forward.

The Court: An hour without cross-examination?

Mr. Dunn: No. With cross-examination?

The Court: With cross.

Mr. Dunn: I think I will need ten minutes.

probably, on direct examination, 10 or 15 minutes.

The Court: We will recess until 9:45 tomorrow morning.

(Whereupon, at 4:15 p.m. on Wednesday, September 5, 1956, a recess was taken until the following day, Thursday, September 6, 1956, at 9:45 a.m.) [168]

Los Angeles, California, Thursday, September 6, 1956, 9:50 A.M.

The Clerk: No. 24572, United States of America vs. A. J. Kahn, for further Court trial.

Mr. Dunn: Ready for the Government.

Mr. Carr: We are ready, your Honor. The defendant is here.

The Court: You may proceed.

Mr. Dunn: Mr. Zimmerman.

ALBERT E. ZIMMERMAN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Give us your full name.

A. Albert E. Zimmerman.

Direct Examination

By Mr. Dunn:

Q. Where do you reside?

A. 1011 West 141st Street, Gardena, California.

Q. Do you know the defendant A. J. Kahn in this matter? A. Yes.

Q. Will you point him out to the Court, please?

(Testimony of Albert E. Zimmerman.)

A. The gentleman sitting at the end of the table.

Q. How long have you known Mr. Kahn? [172]

A. Oh, possibly fifteen years.

Q. Have you ever resided at San Diego, California? A. Oh, yes.

Q. Directing your attention to March of 1954, were you then residing in San Diego?

A. Yes.

Q. And at that time do you recall having had some business transaction with Mr. Kahn?

A. Yes.

Q. Now, what happened on that occasion?

A. Well, I was in the restaurant next door to the bar that Mr. Kahn owns and——

Mr. Carr: I move to strike that on the ground there is no foundation laid to show that Mr. Kahn owns this restaurant, your Horor, or this bar.

Mr. Dunn: I assume it goes to that——

The Court: It may go out.

Q. (By Mr. Dunn): Will you identify the restaurant and the bar that you are speaking of, by names?

A. Well, the Club Royal and the Turf Cafe is next door to it.

The Court: Next door to what?

A. To the Club Royal.

Q. (By Mr. Dunn): This event that you are now going to relate took place approximately [173] when?

A. Well, this was the day before Mr. Kahn left for Las Vegas, which was on the 25th of March, '54.

(Testimony of Albert E. Zimmerman.)

Q. All right, now, do you remember what day of the week this was?

A. Well, it was on a Thursday.

Q. What happened on that occasion?

A. Well, he told me he was going away.

Q. Who told you? A. Mr. Kahn.

Q. He came to you?

A. No. I sat down next to him in the coffee shop.

Q. And this was in The Turf?

A. In The Turf Cafe, and——

Q. Was anyone else present at that time?

A. Well, there was several people in the restaurant at the time.

Q. And you are going to relate a conversation with Mr. Kahn, I take it?

A. Yes, that is right.

Q. Was there anyone else present in the conversation, taking part in it?

A. Well, I believe Miss Marcos was sitting next to him at the time.

Q. And will you identify Miss Marcos for us, please?

A. The young lady sitting in the second [174] row.

Q. Do you know her first name?

A. Well, the first name slips my mind.

Q. Is this Miss Marcos (indicating)?

A. That is right.

Q. And what was said in that conversation?

A. Well, he mentioned that he was going to Vegas for a couple of days.

(Testimony of Albert E. Zimmerman.)

Q. Now, you are referring to Mr. Kahn?

A. Mr. Kahn, and would I do him a favor and take care of Mr. Ursich, in other words, take Mr. Ursich's bets while he was away.

Q. And what did you say in reply to that?

A. I agreed to it.

Q. And was that all the conversation at that time?

A. That was all the conversation at that particular time.

Q. What happened after that?

A. Well, the following day I came down to the Club Royal and found Mr. Kahn and Mr. Ursich in the office there, and they were doing business, and he mentioned he would be leaving about 3:00 o'clock in the afternoon.

Mr. Carr: I move to strike the phrase "doing business" on the ground it has no meaning, your Honor.

Mr. Dunn: I will get him to explain it, your Honor.

The Court: Denied. The motion is denied. [175]

Q. (By Mr. Dunn): Will you state what was happening from which you make the statement that they were doing business?

A. Well, Mr. Ursich was making bets with Mr. Kahn on the horses and he mentioned that he would——

Q. You say mentioned. Who mentioned?

A. Mr. Kahn.

Q. Mr. Kahn mentioned what?

(Testimony of Albert E. Zimmerman.)

A. That he would be going home to clean up and get ready to make the trip to Las Vegas, and would I take over from then on.

Q. This was, then, on the Friday, is that right?

A. This was on the Friday, yes.

Q. And what, if anything, did you do after that?

A. Well, after he left, I continued—after Mr. Kahn left, I continued accepting the bets from Mr. Ursich.

Q. For that day?

A. Until the day was over, until the races were over.

Q. And what was the result, if you recall, of the transactions on that day?

A. Well, the total figures from the entire day, Mr. Ursich was a little over $2300 loser.

Q. All right. Now, what happened next in the series of events you are relating?

The Witness: Repeat that, please? [176]

Q. What was the next event in this series that you are now relating to us?

A. Well, Saturday, the following day, Mr. Ursich came in, and I continued as I was to do until Mr. Kahn came back, to continue accepting his bets.

Q. Now, prior to the time that you took additional bets, was there some occurrence?

A. Well, there was a telephone conversation with Mr. Kahn some time Saturday morning.

Q. All right. Did you have this conversation?

A. Yes.

(Testimony of Albert E. Zimmerman.)

Q. And do you know who placed the call?

A. I think the call came from Las Vegas.

Q. And did you talk to Mr. Kahn, then?

A. Yes.

Q. You recognized his voice? A. Oh, yes.

Q. And what did he say to you and what did you say to him at that time?

A. Well, I told him what happened the Friday and he suggested that I get a check from Mr. Ursich before I continued doing further business.

Q. All right, now, with regard to that, did you take any action when you saw Mr. Ursich?

A. Yes. After he gave me the check. [177]

Q. Well, that is what I am asking. You did receive a check, then, from Mr. Ursich?

A. Yes.

Q. For about how much money?

A. Well, it was over $2300.

Q. Now, then, you say you did take some additional bets from him, then, during that day?

A. Yes.

Q. All right. Then will you continue to relate the bets, then, that occurred between you and Mr. Ursich on that day?

A. Well, he continued betting right up until late in the afternoon and he wanted to make a large bet on a feature race and I didn't want to accept the responsibility for that size of a bet.

Q. What size of a bet are you speaking of?

A. Well, he was trying to bet $1000 on this feature race of the day, and while we were talking

(Testimony of Albert E. Zimmerman.)

it over, Mr. Yale Kahn walked into the office and I explained the situation to him, and he seemed to be a little upset as to what was going on in there. He said, "My dad is foolish fooling with this thing."

And after I mentioned to him that Mr. Ursich wanted to bet $1000, he tried to reach his dad in Las Vegas, but wasn't very successful at the time; and then he decided that [178] he would accept $500 of the bet himself.

Q. Is that what he said? Did he say, "I will take five hundred"? A. Yes.

Q. Or how did that come about?

A. He said, "I will take five hundred," but before he would, he wanted to be sure and have Mr. Ursich's check. He told me he was going across the street to the Grant Hotel Barber Shop, and if Mr. Ursich would give him the check, I should bring it over to him, which I did.

Q. Well, did you have a further telephone conversation prior to this?

A. Well, we tried to reach—Yale tried to reach his dad in Las Vegas and wasn't very successful, but finally we did reach him and after I explained to him what happened about Mr. Ursich wanting to bet a thousand dollars and Yale had accepted half of it, the $500, he said it would be all right, he would take the other five hundred.

Q. Then, what happened after that?

A. Well, that was the final bet made of the day, Mr. Ursich's.

(Testimony of Albert E. Zimmerman.)

Q. Did you get anything from Mr. Ursich for that bet? A. Repeat it, sir?

Q. Did Mr. Ursich give you anything to cover that bet? [179]

A. Well, he had money, he was winners that day at that particular time, and naturally it wasn't necessary for him to write any check or give me any cash.

Q. But you did receive a $500 check that you took to Mr. Kahn?

A. Oh, yes, yes. I took that over.

Mr. Dunn: I see. Cross-examine.

Cross-Examination

By Mr. Carr:

Q. He owed you $2300 on his betting?

A. Yes, it was a little over $2300.

Q. He gave you a check for $2300?

A. Yes.

Q. What happened to that check?

A. Well, I just put it away in the drawer there.

Q. Never cashed it?

A. In the office, in the office of Club Royal.

Q. You never cashed it?

A. I beg your pardon?

Q. You never cashed that check?

A. I, no, definitely not.

Q. Mr. Zimmerman, you are not yourself under investigation for carrying on bookmaking, are you?

Mr. Dunn: I object to that as being an improper question. [180]

(Testimony of Albert E. Zimmerman.)

Mr. Carr: May I address the Court on that?

The Court: The objection is overruled.

Mr. Dunn: Whether he is under investigation I don't think is a matter before this Court.

The Court: It may show interest.

Mr. Carr: It is an attempt to show bias.

The Witness: Would you repeat that again?

Q. (By Mr. Carr): Are you under investigation by the Bureau of Internal Revenue yourself?

A. No, sir, not that I know of.

Q. You have never been, have you?

A. Well, yes, at one time.

Q. But, when were you first interviewed by Mr. Hoopman?

A. Oh, it has been possibly six or seven months ago.

Q. You are bookmaking now, aren't you?

A. No, sir.

Q. When was the last time you were bookmaking?

Mr. Dunn: I object to these questions, your Honor.

The Court: Overruled. He has already testified that he was bookmaking. He has waived any rights he has.

A. It has been about a year, now.

Q. (By Mr. Carr): You gave all these facts to Mr. Hoopman here, did you, the Revenue Agent.

A. What facts are those? [181]

Q. About the fact that you were in the bookmaking business?

(Testimony of Albert E. Zimmerman.)

A. I don't remember just exactly everything I told Mr. Hoopman.

Q. Well, you were interviewed fully by him, weren't you? A. No, not fully.

Q. Well, you were interviewed by him, weren't you? A. I spoke to Mr. Hoopman.

Q. Did you voluntarily come in to Mr. Hoopman? A. No. Mr. Hoopman came to see me.

Q. By the way, what is your business now, what are you doing for a living?

A. I am a professional gambler.

Q. And you work with one of the clubs down in ——

A. I don't work any in the clubs. I go into the clubs.

Q. You are not bookmaking at the present time?

A. No, sir.

Q. But you were bookmaking about a year ago, as I understand it, is that right?

A. That is right.

Q. And when you were interviewed by Mr. Hoopman, you explained to him, I take it, that you were a bookmaker and a gambler? [182]

A. Well, I explained to him that I was gambling. The first time I saw Mr. Hoopman, I was in the club playing cards.

Q. But you explained to him that you were a bookmaker and had been for some time, didn't you?

A. I don't remember just exactly what I said to Mr. Hoopman.

(Testimony of Albert E. Zimmerman.)

Q. Did you give a written statement?

A. No, sir.

Q. You were interviewed by him for some period of time? A. Just a minute or two.

Q. And are you a friend of Ursich?

A. Of Ursich?

Q. Yes.

A. Well, I have known him for quite some time.

Q. Has Mr. Ursich had any conversations with you recently? A. No, sir.

Q. When was the last time you saw Mr. Ursich?

A. The last time I saw him was when I was in San Diego, possibly about two years back.

Q. And you were at that particular time in the business of bookmaking, that is, I am referring now to early 1954, is that right? [183]

A. Yes, sir.

Q. In San Diego? A. Yes, sir.

Q. Now, I want you to tell me how many other bookmakers were operating there in the Club Royal at that time, that you know of?

A. Well, there were quite a few from time to time.

Q. Well, about how many would you say that were in there each day?

A. Well, at different hours of the day, at one time there may have been three or four; at other times, no one.

Q. As I understand you, then, Mr. Kahn permitted these bookmakers to sit in there and to carry

(Testimony of Albert E. Zimmerman.)

on their business without any interference, is that right?

A. Well, it was a public place. There was never any objections to anyone making a bet or accepting a bet.

Q. But what I ~~am~~ asking you is that the three or four bookmakers were usually sitting around there at the bar or at the table and people were making bets with them, is that right?

A. I have seen it, yes.

Q. And they were making bets with you, too, weren't they?

A. I have accepted bets in there, yes. [184]

Q. Well, that was customary, day in and day out and day in and day out, and the practice, wasn't it?

A. Well, it didn't happen every day.

Q. I didn't ask you that, but I mean it was customary, it went on from day to day, they may have skipped a day, but generally there were three or four bookmakers there in the place sitting around taking bets?

A. Yes. I have seen them often in there.

Q. Name some of them.

Q. Well, there was a Tex Cook, there was a Charley Kolin; there was an Al Martinez. From time to time there was a couple of others.

Q. Now, let me ask you this: You yourself have seen Ursich make bets with those bookmakers, haven't you? A. Yes, I have.

Q. You have seen him get money from the Club

(Testimony of Albert E. Zimmerman.)

Royal, from some employee of the Club Royal, and then lay the money with some of those bookmakers, haven't you?

The Witness: Repeat that, sir.

Q. You have seen Ursich obtain this money from some employee of the Club Royal and then lay it with one of those bookmakers that you have mentioned?

A. Well, I can't say that I have seen that.

Q. You have seen him get cash from the employees of the Club Royal, haven't you? [185]

A. Yes, I have seen him cash checks in there.

Q. And then you have seen him take it and lay a bet with one of those bookmakers there in that place, in the Club Royal?

A. I don't say I have seen him do that the moment he received the cash, but I have seen him make bets in there.

Q. As a matter of fact, Mr. Zimmerman, you have seen Mr. Ursich cash checks in there many times, haven't you? A. Yes, sir, I have.

Q. And receive the cash?

A. Yes. I have seen him receive cash.

Q. You have seen him receive the cash not only from Mr. A. J. Kahn but from Percy Welch, for example, haven't you?

A. No, I have never seen Percy Welch give him any cash.

Q. You have seen him get cash, Ursich receive cash from Anderson, haven't you?

A. Anderson?

(Testimony of Albert E. Zimmerman.)

Q. Yes.

A. I don't know who Anderson is by name.

Q. Do you know there is a cook there? Do you know who the cook is? [186]

A. Oh, Andy.

Q. Andy, yes.

A. No, I have never seen him——

Q. How about Thornton? Do you know Thornton? A. Yes, I have seen Thornton.

Q. You have seen Thornton there hand cash to Ursich, haven't you? A. No, sir, I haven't.

Q. Who else have you seen hand cash to him?

A. I have seen A. J. cash checks for him; that is the only other I can recall.

Q. Haven't you seen Yale cash checks for him?

A. No, sir, I haven't.

Q. You know Yale, don't you? A. Yes.

Q. And you have seen him there at the place of business? A. Yes.

Q. Haven't you seen other bartenders cash checks for Ursich? A. Yes, I have

Q. And you have seen him—as a matter of fact, you have seen Ursich walk up and say, "Let me have $20.00" and "$30.00"?

A. That is right. [187]

Q. And they would hand it to him in cash without cashing a check? A. That is right.

Q. As a matter of fact, Mr. Ursich sits around there and drinks, a great part of those days, and bets during the day? A. Yes, that is right.

(Testimony of Albert E. Zimmerman.)

Q. And those bookmakers sit around him and he is known as a mark, isn't he?

A. I don't know as I would put it that way.

Q. You know what a mark is?

A. He is a rather liberal better in his drinking.

Q. And as he gets a little more to drink, he gets a little more liberal, generally speaking?

A. Well, to me, I would consider him a big bettor at all times.

Q. At least you bookmakers sat around there with him as the day went along, and if he made a $50.00 bet, somebody would speak up and say, "Do you want another fifty with me?" isn't that correct? A. Correct.

Mr. Carr: May I have just a moment, please?

Q. Now, Mr. Zimmerman, on this Las Vegas proposition, you say Yale Kahn got a check for $500?

A. Yes, I took it over to him. He was in the barber [188] shop of the Grant Hotel.

Q. You don't know whatever happened to that check? The last you saw of it, it went to Yale Kahn? A. That is right, sir.

Q. Now, I thought the bet, though, was for a thousand dollars?

A. Well, Mr. A. J. Kahn accepted the other five hundred.

Q. Did you hear him accept?

A. Yes, he told me over the phone that it was all right. I explained to him that Yale had taken the other $500, and he said, "That is all right."

(Testimony of Albert E. Zimmerman.)

Q. Now, on Friday—pardon me. I thought you said on Saturday Ursich was a little over $2300 loser?

A. That is right; that was for Friday's business.

Q. Now, if he was $2,300 loser, when did you expect to pick up the $2,300?

A. Well, he gave me a check Saturday morning. That was my instructions, to get a check from him.

Q. Did you ask him if he had the money in the bank?

A. No. That wasn't any of my affair.

Q. You didn't interest yourself in the matter as to whether the check was good? A. No, sir.

Q. You didn't ask anyone to cash that [189] check? A. No, sir.

Q. You didn't know, for example, that on March 25, that is the day the bet was made, you say—— A. On the 26th.

Q. ——on the 25th of March, that he only had $447 in the bank?

A. Well, I didn't know that.

Mr. Carr: Well, just one further question, your Honor.

Q. By the way, have you ever had a bookmaking stamp yourself?

Mr. Dunn: I object to that, your Honor, as being an improper question.

The Court: Objection sustained.

Mr. Carr: That is all.

(Testimony of Albert E. Zimmerman.)

Redirect Examination

By Mr. Dunn:

Q. Mr. Zimmerman, the check which you stated you put in the drawer, was that the desk drawer of a particular person?

A. That was in the office of the Club Royal.

Q. Well, did you know that to be the desk of some one person?

A. Well, it was the office desk. I suppose everyone connected with the business——

Q. Did you ever tell Mr. Kahn? [190]

A. Oh, yes.

Q. That you put the check there?

A. Oh, yes, definitely.

Q. Did you turn the check over to him personally? A. Yes.

Q. Did you hand it to him? A. Yes.

Q. When did you do that?

A. Well, that is when he came back from Las Vegas. I think that was on the Sunday night.

Q. You then personally gave him the $2300 check? A. Yes.

Mr. Dunn: No further questions.

Mr. Carr: That is all.

The Court: You may step down.

Mr. Dunn: The plaintiff rests at this time, if the Court please.

(Whereupon the plaintiff rested its case in chief.)

MOTION FOR ACQUITTAL

Mr. Carr: If the Court please, we would like to move for the Court to enter a verdict of not guilty on all the counts on the ground in particular that the Government has failed to prove bookmaking, if they have proved bets, and let us take everything with the most favorable intendment for the Government and let us assume that they have proved that some bets were made. But they have failed to [191] prove that this man was engaged in the business of bookmaking, which is required.

In other words, the Statute and the regulations are very clear that a person may take bets, but they must establish that he is engaged in that business. Now, it doesn't mean, of course, that he has to be exclusively in that business, I realize that, but I believe that the evidence falls far short of showing here, taking some of it to be true, that he was engaged in the business of bookmaking.

Now, may I just quickly refer to the evidence.

Of course, Ursich has testified that he did make bets with the defendant. On this particular motion, I don't know just how the Court will have to view his testimony. It is rather vague.

But, taking the other evidence, this Qualin, the only thing he said was that at the race track, he purportedly made—at one time he was out of money and Mr. Kahn took the bet instead of the track. He couldn't go to the window, he couldn't get a check cashed. I shouldn't say it, but a lot of my friends get into the same thing at the track. Maybe it is bookmaking, I don't know.

And the reason I asked him the question about bookmaking, it was not to impeach him as a crime, but to show that he himself being a bookmaker, it is just not probable [192] that bookmakers are generally making bets for themselves, and my experience has been with bookmakers, that they don't bet on horses, they take bets, because they know it is a sucker game. Now, his testimony proved in my opinion absolutely nothing.

As far as this Martinolich is concerned, his testimony came to absolutely nothing, and I believe the Court struck all the testimony with respect to the statement.

Now, this man who has just testified has testified as to one particular day of betting, a Friday, and a Saturday, and I submit, if the Court please, that even if you assumed that they were telling the truth and that bets were made, the Government has not established that this man is in the business of bookmaking and I would like to point out in particular that this last man has testified that the bookmakers were operating in the place.

Now, with three or four bookmakers working there and taking bets, it seems to me that the inference might well be drawn from this testimony that Mr. Kahn, the manager of the place, was doing nothing more than is usually done in those cases, and that is accommodating bookmakers and accommodating bettors simply for the purpose of getting business, the bar business, which is done at many of these places. And I submit that under the regulations and under the law, he must be actually

engaged in the business of [193] bookmaking or else he is not liable for any tax.

The Court: I might say, Mr. Carr, you refer to your experience, that in your experience bookmakers accept bets, but that bookmakers don't make bets. I don't know the basis of your experience, but I might say that from my experience as a Judge of the Superior Court for a number of years, I learned that bookmakers make more bets than anyone else.

Mr. Carr: Well, I guess I am wrong about that, then.

The Court: Bookmakers ordinarily lay off a portion of their bets.

Mr. Carr: I didn't mean lay off, your Honor.

The Court: Of course, that isn't anything more than making a bet.

Mr. Carr: That is true, I grant you.

The Court: If a bookmaker lays off a bet, he is making a bet. Most bookmakers lay off a good deal of their bets.

Mr. Carr: That is correct, but I mean this wasn't, it wasn't a layoff at the track; this was just a straight bet.

I imagine that among bookmakers, there are a lot of shaky people and that if they think a horse will win, they lay off the whole $500.

The Court: And whenever they do that, they are making [194] a bet.

Mr. Carr: Technically you are right. It is usually a layoff proposition.

The Court: Mr. Dunn?

Mr. Dunn: Your Honor, I think we have proved here that this man was in the business of accepting bets.

Your Honor hasn't, I am quite sure, taken the trouble to total the checks, and we did not read the amounts of those checks, but you will find that the checks which were admitted into evidence on behalf of Ursich will come to—I don't have an exact figure, but it is over $6200, together with the testimony by Qualin of three $300 bets, which is a total of $7100. Those checks and those bets cover from September, 1953, to March, 1954, seven months, a total of $7000 and more in seven months. That is a fair piece of business.

And in addition to that, on the question of business, and I don't purport to explain all the evidence here, Mr. Zimmerman was asked to step in and fill in for the man, to take care of this business during the time that Mr. Kahn was away. So there is certainly evidence that he was under his influence, in that they wanted to have somebody available to take bets.

I think that clearly the Government at this stage of the case has proved that he was in the business of taking bets. [195]

The testimony of Qualin, in addition, was that he has been betting there since '48 or '49 with the fellow, so it shows the whole pattern.

He testified to only three specific bets he made at the track. He testified he is out to sea from time to

time but when he was back, he was in to make a bet, that is the testimony of Ursich, for years.

In my trial memorandum, there are only three sentences which I would like to read, which are taken from the House Report when the bill setting up this tax was reported. The citation is there in my memorandum, but the first three sentences state this:

"Wagers on sports events or contests, to be taxable, must be placed with a person engaged in the business of accepting such wagers. The purpose of this requirement is to exclude from tax the purely 'social' or 'friendly' type of bet. A person is considered to be in the business of accepting wagers if he is engaged as a principal who, in accepting wagers, does so on his own account."

Then they go on to make other statements there, but certainly here was a man who was engaged in this business as an occupation, and it wasn't merely friendly or social [196] bets, when you come to a point of an average of over a thousand a month.

And I think the testimony further of these men is that these are the bets they can recall, as they have some specific reason for recalling them, but that there were other bets throughout, over this course of time.

I am not going to argue the other points here which I think the Government is responsible for proving, but apparently counsel has made no point of them.

Mr. Carr: May I just say one thing, your Honor.

I would like to say many of those checks he was shaken on. You remember he used the word "retract."

The amount doesn't prove the business. Maybe I am wrong about that, but if it did maybe I'd better go out to my golf club because at the club game a hundred dollar bet, which is not uncommon, amounts to four or five or six hundred dollars, but as between the same two fellows, at the end of the year, they at least have a chance to break even. It is a little different from horse racing.

Now, let us say we play once a week, that is 52 times a year; and let us say you won 20 times and lost 32 times; that would be a considerable sum of money passing back and forth, but at the end of the year, it wouldn't amount to much between the foursome.

Now, I don't think that counsel ever intended to try [197] to pinpoint it on the amount.

In other words, I might be out at the race track with your Honor, and, your Honor, I might say, "I would like to bet a thousand dollars on this horse," and you might say, "You are just completely out of your mind. I will just save you the money and take the bet myself." Now, that certainly isn't business. And maybe it is beyond the social point. I don't know. Perhaps I have been a little anti-social in my activities in my past life. I don't want to make any confessions here, but many of us are fair players and golf players get into these long games, and we play for substantial stakes at times. I am sorry, I don't have a stamp.

Now, it is intended by the amounts that we should be placed in the predicament where we should get a license to be a bookmaker or to be a gambler? And I submit that regarding the amount, it was never intended that the amount was the determining factor.

And I think frankly that this case boils right down to one proposition, that we have a man here who is sore about something, and that is the whole case.

DENIAL OF MOTION

The Court: The motion is denied. [198]

And whereupon the defendant to maintain the issues on his behalf, offered and introduced the following evidence, to wit:

Mr. Carr: We will call Mr. Athaide, please.

JOHN M. ATHAIDE

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give your full name, please.

A. John M. Athaide. (A-t-h-a-i-d-e.)

Direct Examination

By Mr. Carr:

Q. Your Honor, without marking this first, did you have a copy of this?

A. No. There are original copies, sir.

Mr. Carr: Well, perhaps if I may, I will try to avoid putting it in evidence, unless counsel insists on it. Tell me first, what does it consist of?

(Testimony of John M. Athaide.)

A. It is an account of Hubert and Marie Ursich, a checking account.

The Court: Counsel, you had better arrange with the United States Attorney first on the question of whether or not he may testify from this, without it going into evidence, because of course, if counsel insists, it will have to go into [199] evidence.

Mr. Carr: That is right, your Honor. I thought perhaps from what developed, it would show it was not necessary, but he can look at it and if he wants it to go into evidence, I thought we could just put it in.

Q. What was the address of the customer, please? Do you have it on there?

A. Let me see if I have it there. Just a moment. 2820 Ivy Street, San Diego.

Q. Will you turn to March 25, the deposit slip, or is that the original?

A. These are the originals.

The Court: Tell us what it is, first.

Q. (By Mr. Carr): These are original deposit slips you are looking at?

A. Yes, that is right.

Q. And attached to that some yellow sheets are there. What are they?

A. They are some ledger sheets from our bank records.

Q. And those are whose account?

A. Hubert and Marie Ursich, also.

Mr. Dunn: If there is going to be reference to

(Testimony of John M. Athaide.)

specific parts, I ask that they be marked and put in evidence.

Mr. Carr: I will do it. I have co-operated with the Government and saved the time of banks many times on these matters, but if you insist, I will do it. [200]

Q. First of all, let us take the deposit slip. Is there one for March 25? A. For what year?

Q. 1954? A. No, sir.

Q. Is there one for March 24? A. Yes.

Q. How much is it? A. $300 in cash.

Mr. Carr: Let us take that out, please, and we will mark them all in one.

Q. Is there a deposit slip for the following Monday?

A. That would be for the 29th. There is one for the 29th. It is for $2000 in currency and a check for $1500.

Mr. Carr: Take that one out, please.

Now, what is the next deposit slip that you have?

A. April 9.

Mr. Carr: All right, just those two. I will ask that these two be marked and identified. It will be understood that if the bank wants to substitute photostatic copies, they may be substituted.

Mr. Dunn: It is so stipulated.

Mr. Carr: May these be marked as one exhibit? [201]

The Clerk: Defendant's Exhibit A.

(Said deposit slips were marked as Defendant's Exhibit A for identification.)

(Testimony of John M. Athaide.)

Q. (By Mr. Carr): These deposit slips show a deposit on March 24 of $300 and on March 29 of currency of $2000 and a check "90-1301"—what bank is that?

A. I am not sure, sir. It would probably be a downtown bank in San Diego; I am not positive.

Q. (Continuing): A check for $1500, being a total of $3500.

Now, will you turn to the ledger sheet, please, if you have one there for March of 1954.

A. I have it.

Q. Do you have that there? A. Yes, sir.

Mr. Carr: And will you take that, also, that one, please? We will offer this next, your Honor.

The Clerk: Defendant's Exhibit B.

(Said document was marked Defendant's Exhibit B for identification.)

Mr. Carr: We would like both of these exhibits to be received in evidence.

Mr. Dunn: No objection.

The Court: They will be received.

(Said documents were received in evidence as Defendant's Exhibits A and B.) [202]

Mr. Carr: And I should like to point out to the Court that on March 25 the bank account of Ursich was only $447.10. That is the date that alleged $2300 check was issued.

Mr. Dunn: Well, I would like to correct counsel's statement. I think the check was on March

(Testimony of John M. Athaide.)

26 on a Saturday morning. On the 26th, the bank was not open, but on the 29th, he might have had that balance.

Mr. Carr: Well, on the 29th he had a balance of—he deposited $3500 on the 29th, so he had a balance of $2,843.52.

No further questions.

Mr. Dunn: No questions, your Honor.

The Court: There is just one question, incidentally, because you have raised a question. I don't know the materiality, but you raised the question with reference to the balance. He says the bank wasn't open from Friday until Monday. Of course, the banks were open on Saturday mornings. Until you can arrive at the date, I don't know whether they were open on Saturday mornings in 1954 or not.

Mr. Dunn: Well, I may be in error there.

Mr. Carr: The witness can probably tell us.

The Court: Maybe the witness can tell us.

The Witness: I am not sure really. I will have to [203] check back.

The Court: I see. All right.

Mr. Carr: Mr. Calkins.

JAMES CALKINS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give us your full name.

A. James Calkins.

Direct Examination

By Mr. Carr:

Q. What is your occupation, Mr. Calkins?

A. I am a bartender at Club Royal.

Q. The Club Royal, is that in San Diego?

A. Yes, sir.

Q. And I take it you are a member of the Bartenders Union, then? A. I am.

Q. How long have you been in this business?

A. About 20 years.

Q. And were you employed there at the Club Royal during the period of the fall of 1953 and the winter and spring of 1954? A. I was.

Q. Generally, what were your hours? [204]

A. Part of the week I worked days, and part of the week I worked nights.

Q. And you know Mr. A. J. Kahn here, do you?

A. I do.

Q. And what is his position there? Do you know?

A. Well, I suppose his title would be supervisor.

Q. Manager? A. Manager.

Q. Or supervisor. And do you know Mr. Yale Kahn? A. Yes, sir.

Q. Now, is that the son or the nephew? I guess you know both of them.

(Testimony of James Calkins.)

A. I know both of them, yes.

Q. The son, I take it, has nothing to do with the business there, as far as you know?

A. No, sir.

Q. And Mr. Yale Kahn, the nephew, what is his relationship to the Club Royal, if you know?

A. I believe the relationship is nephew.

Q. No. I mean to the Club Royal.

A. Oh, his relationship, well, he is manager, supervisor, or——

Q. Now, I take it, then, waiting on bar, when you were on the shift during the day, at what hours were you waiting, tending bar? [205]

A. From 10:00 in the morning until 6:00 at night.

Q. And during that period of time did you see many bookmakers around there? A. Yes, sir.

Q. Generally during the day would there be more than one bookmaker? A. Yes, sir.

Q. Well, approximately how many each day?

A. Oh, some days two or three and some days five or six.

Q. And by the way, do you know whether Mr. A. J. Kahn was supervising any other night clubs or bars?

A. He had five or six of them in the neighborhood.

Q. And did he at any time leave the place to go out, so far as you know, to those other places?

A. He was gone more than he was there.

Q. And by the way, who were some of the names

(Testimony of James Calkins.)

of some of the bookmakers that were hanging around there, and if they were taking—were they taking bets? A. Yes, sir.

Q. And who were they, do you remember?

A. Well, we have Al Zimmerman and we have George the Greek, I don't know what his full name is, Gordon MaCauley or McCaddon or something like that; Window Washer Charley. [206]

Q. Window Washer Charley?

A. I don't know what his full name is.

Q. Who else?

The Witness: Well——

The Court: What was his business? What was his business, washing windows or bookmaking?

A. I don't know, your Honor. I never seen him wash windows.

Q. (By Mr. Carr): Did you see him take bets?

A. Yes, sir.

Q. Did you know a fellow named Ursich?

A. Yes, sir.

Q. And did you see him around the Club Royal from time to time? A. Very often.

Q. And when he was there, was he a customer of the place? A. Yes, sir.

Q. A good customer? A. Yes, sir.

Q. Did you serve him from time to time?

A. I did.

Q. And did you ever see him make bets there?

A. Yes, sir.

Q. Did you ever see him make bets with any of these [207] bookmakers? A. Yes, sir.

(Testimony of James Calkins.)

Q. Once or many times?

A. Well, many times.

Q. Do recollect whether or not you ever cashed any checks for Mr. Ursich? A. I have.

Q. Once or many times?

A. A number of times.

Q. Did you ever at any time advance money to Mr. Ursich? A. Yes, sir.

Q. At his request? A. Yes, sir.

Q. By that I mean cash? A. Yes, sir.

Q. How would you get the cash back?

A. Oh, when he would cash one of his checks, then he would give it back to me in cash.

Q. Did you ever cash checks for him also?

A. Yes, small ones.

Q. And on what authorization? You as a bartender, did you have the authority to cash checks?

A. It was strictly on our own, if it was a personal check, it was strictly on our own. If we cashed a personal [208] check, I mean we had to be good for it. And Babe was good, if he wanted to cash a ten or twenty dollar check, we would do it for him.

Q. And when he wanted to cash a larger check, what if anything was done, to your knowledge?

A. Well, usually, if somebody was sitting around there at the time, like Andy or Percy, it would be given to them.

Q. Andy who?

A. Andy the cook, Andy Anderson.

Q. And Percy who?

(Testimony of James Calkins.)

A. Percy Welch was the porter there.

Q. What would happen?

A. They would give the check to them and they would go around to the bank and cash it.

Q. Did you ever see what was done with the money on any of those checks, the cash?

A. It was given to Babe when they brought it back; he wrote out the check.

Q. Did you ever see Mr. A. J. Kahn endorse checks at any time?

A. Oh, yes, many times. In fact, I think they had to have his OK on them before the bank would accept it.

Q. As I understand, these checks would be cashed by you or somebody at the Club Royal, and the check taken to [209] the bank and the money brought back and given to Babe? A. Yes.

Q. Did you ever at any time see Babe there give a bet on a horse to Mr. A. J. Kahn?

A. I never have.

Q. And you were there on and off during that entire time, is that right? A. Yes.

Q. By the way, do you know what a "mark" is?

A. I do.

Q. Was Mr. Ursich considered sort of a "mark" around the place?

A. I suppose you would consider him that, yes.

Q. And can you tell me whether or not when he came there the bookmakers sort of gathered around him? A. They sure did.

Q. And what would they do?

(Testimony of James Calkins.)

A. Well, they would ask him if he liked a horse on a certain race, and if he would say "Yes," they would say, "How much do you want?"

Mr. Dunn: I object to any testimony as to a horse, and so forth. I would like to move to strike that last statement.

Mr. Carr: This is impeachment of the witness Ursich.

The Court: Well, denied. Denied. [210]

Mr. Dunn: I don't know how it impeaches him. He has admitted he made such bets, your Honor.

The Court: It is not offered for the truth of the statement. In other words, it is not a matter of whether it is true that he did or that he didn't take the bets.

Mr. Carr: No further questions.

Cross-Examination

By Mr. Dunn:

Q. You are still employed at the Club Royal, Mr. Calkins? A. I am.

Q. Who owns the Club Royal at this time?

A. I believe it is a corporation.

Q. The D.M.B. Corporation?

A. I really don't know, sir.

Q. You don't know who your employer is at this time, then? A. I know who my manager is.

Q. Who is your manager? A. Mr. Kahn.

Q. Mr. Kahn, Mr. A. J. Kahn? A. Yes.

Mr. Dunn: No further questions.

The Court: You may step down.

(Testimony of James Calkins.)

Mr. Carr: That is all. [211]

The Court: Just one second. Do I understand from your last testimony you do not even know who your employer is?

A. The place is owned by a corporation, your Honor. I don't know who is the owners of the corporation. Mr. Bertolino right here is considered a manager and Mr. Kahn there is also considered a manager because he has other places. My immediate boss——

The Court: Who pays you?

A. Well, there are two signatures on the check.

The Court: Mr. Kahn and this other gentleman?

A. No, sir.

The Court: What?

A. No, sir. Mr. Julius Kahn and Mr. A. L. Bertolino.

The Court: All right.

Mr. Carr: Mr. Thornton.

ROBERT THORNTON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Robert Thornton.

Direct Examination

By Mr. Carr:

Q. Mr. Thornton, your occupation, please, [212] sir? A. Bartender.

Q. Where?

(Testimony of Robert Thornton.)

A. At the present time, at the Blue Note.

Q. In the latter part of 1953, that is, the fall, the winter months and the early part of 1954, where were you employed?

A. At the first part of 1953, I was at the Club Royal, sir.

Q. At the Club Royal? A. Yes, sir.

Q. Were you at the Club Royal during the latter part of 1953? A. I don't believe so, no, sir.

Q. Well, what was Mr. A. J. Kahn, the manager there, at the time you were there?

A. Yes, sir.

Q. Did you know a man by the name of Ursich?

A. Yes, sir.

Q. And generally what were your hours in tending bar?

A. I worked back and forth; some days, some nights.

Q. Did you ever see Mr. Ursich around there while you were tending bar? A. Yes, sir.

Q. And did you observe any bookmakers around there while you were tending bar? [213]

The Court: Mr. Carr, will you first establish what he means by the early part of 1953, so we can dispose of this quickly?

Mr. Carr: Yes, sir, I will.

The Court: To see whether or not it is material.

Q. (By Mr. Carr): What part of 1953?

A. The reason I said that is because I am not positive, I might have been there six months or the

(Testimony of Robert Thornton.)

last part of it, but I just can't remember at this time. I thought about then. I was with the Club Royal, I worked for Mr. Kahn alone eleven years, or the corporation. I was working at the Club Royal in 1953.

Q. But you don't remember just exactly what time? A. No, sir.

Q. During the time that you were working there at the bar, did you see Mr. Ursich making bets?

A. Yes, sir.

Q. And with whom?

A. Different bookmakers.

Q. Did you ever see him make a bet with Mr. A. J. Kahn? A. No, sir.

Q. Did you ever see him make a bet with Mr. Ursich? A. Yes, sir.

Q. And what was the system, how would you go about that? [214]

A. Well, if Babe came in, in the morning, we only had a bank of a hundred dollars, and it was in change and ones and fives, and if you wanted to cash a check for forty or fifty or sixty dollars, whatever it was, I would have to give him all my ones or all my fives, in order to do it. And I couldn't do it, so several times he wrote me out a check and I gave him partial payment for it and he used it for drinks or whatever it was, and then when somebody with authority came down, Mr. Kahn or Yale, or anybody, so that we could get a check cashed, would take the check and get it cashed.

(Testimony of Robert Thornton.)

Q. How was it cashed? Supposing Mr. A. J. Kahn came in, endorsed a check and he wanted cash for $200, how would you do that, how was it done? A. Beg your pardon?

Q. How was the check for $200 handled, in other words, he had a $200 check and A. J. Kahn came in or Mr. Yale Kahn came in, what was the procedure, what happened?

A. We would give t' 'm the check and they would initial it, and Andy would take it to the bank or somebody would take it to the bank.

Q. And then, when the cash came back, what would happen to the cash?

A. I would take the money and hand back to Babe [215] what he had coming.

Q. Would you deduct what you had advanced him? I mean, is that the idea? A. Yes, sir.

Mr. Carr: No further questions.

Cross-Examination

By Mr. Dunn:

Q. Were you at the Club Royal after July 1, 1953?

A. I cannot answer the question honestly, because I really don't remember.

Q. Then, actually, you didn't see Mr. Anderson ever take a check to the bank?

A. Oh, yes, sir. I worked there——

Q. Did you follow him to the bank? You mean somebody told you he took the check to the bank?

A. No, sir. I worked there for a long time.

(Testimony of Robert Thornton.)

Q. Well, you were working there. You didn't go to the bank, did you?

A. I didn't follow him to the bank, no, sir.

Q. The Blue Note, where you now work, is one of the Kahns' places, isn't it?

A. Mr. Bertolino is my boss.

Q. Well, I asked you a different question. It is one of the Kahn places, isn't it?

A. Not to my knowledge. [216]

Q. Well, Mr. Bertolino works for the Kahns, too, doesn't he?

A. It is a B.M.B. corporation.

Q. That is the name of the corporation that has the Club Royal? A. Yes, sir.

Mr. Dunn: No further questions.

Mr. Carr: That is all. Thank you.

Mr. Anderson.

ANDRE E. ANDERSON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give us your full name.

A. Andre E. Anderson.

Direct Examination

By Mr. Carr:

Q. Mr. Anderson, what is your occupation?

A. I am a cook.

Q. Where? A. At the Club Royal.

Q. How long have you been engaged there?

(Testimony of Andre E. Anderson.)

A. Ten years.

Q. How long have you known Mr. A. J. Kahn?

A. About eight years.

Q. Were you there in 1953 and 1954? [217]

A. Yes, sir.

Q. By the way, do you know Babe?

A. Yes.

Q. Ursich? A. I do. Very well.

Q. How long have you known him?

A. Oh, for a period of five or six years.

Q. During the period of 1953 and 1954, was he around the place much?

A. Oh, yes, whenever he was in from fishing.

Q. And what was he usually doing there, if you know?

A. Well, he would come in and have a few drinks and sit around and make a few bets.

Q. Were there bookmakers around there?

A. Yes, sir.

Q. When Babe was around there, were there usually one or two or three or four?

A. Oh, four or five sometimes.

Q. Did you ever have occasion to cash any checks, go to the bank and cash any checks?

A. I did all the time.

Q. And explain to me the procedure as it existed in 1953 and '54, and how would you do it?

A. Well, if it was a small check, I just took it over to the bank and got it cashed, and if it was a large [218] check, got the manager there to OK it, then I would take it over to the bank.

(Testimony of Andre E. Anderson.)

Q. Who was the manager?

A. Well, different managers at different times.

Q. Well, was it Mr. A. J. Kahn part of the time? A. Sometimes he was in there.

Q. And how about Mr. Yale Kahn?

A. And Yale Kahn was in there, and there was A. Bertolino.

Q. And did you ever take them over where you just endorsed them yourself? A. Yes, sir.

Q. You mean the bank would not take the checks unless somebody over there endorsed them?

A. Well, you can't get any money at any bank without your endorsing the checks.

Q. I mean at this particular bank, one of your employees. A. Yes.

Q. Mr. Kahn or somebody would endorse them?

A. Well, they would know we were an employee, we had been employed regularly, and sure, we didn't have any trouble getting the checks cashed if there was money in the bank.

Q. What bank was it that you went to? [219]

A. Around the corner.

Q. Do you remember the name of it?

A. The National Bank.

Q. The United States——

A. I think the United States National Bank.

Q. And what would you generally do with the money when you came back with the money from cashing the check?

A. The money was given to Mr. Ursich.

Q. To Ursich? A. Yes.

(Testimony of Andre E. Anderson.)

Q. Now, I want to show you some checks here which purport to have your name on them.

First, I will show you Exhibit No. 1, and it is for $50.00, September 4, and it is endorsed on the back "A J Kahn" and "A E Anderson," is that you?

A. Yes, sir.

Q. And do you recollect what you did with the cash from that check?

A. I brought it back to Mr. Ursich.

Q. To Mr. who? A. To Babe Ursich.

Q. Did you go to the bank yourself and get that cash on that? A. Yes, sir.

Q. I show you Exhibit No. 2, which is a check for [220] $120.00, September 8, and on the back there is "A J Kahn A E Anderson," is that your signature? A. Yes, sir.

Q. Would your answers be the same——

A. The same.

Q. ——respecting that exhibit?

A. Yes, sir.

Q. Now, on Exhibit 3, I note—first, I will ask you here, is that your endorsement on the back, "A E Anderson"? A. Yes, sir.

Q. Now, I notice it says, "O K," a line, then "A J Kahn." A. Yes.

Q. And then "A E Anderson." A. Yes.

Q. And then after that, I find "Pay to the Order of" there and it says, "For Deposit Only Surf Club 718 Ventura Place." Do you know what happened to that check? Can you explain it?

A. Well, I took it to the bank, and they said to

(Testimony of Andre E. Anderson.)

wait a minute, and would I sign my name on the back, and the girl took it over and said there was no money in the account and I would have to hold the check.

Q. So, what did you do, bring the check back?

A. Brought the check back. [221]

Q. And to whom did you turn it over, do you remember?

A. To Babe Ursich.

Q. You gave the check back to Babe?

A. Yes, sir.

Mr. Carr: That is Exhibit No. 3, your Honor.

The Court: Let me see Exhibit No. 3.

Q. (By Mr. Carr): Now, Mr. Anderson, the next check which your name is on is Exhibit 16.

As I recollect it, Exhibit 17, which his name is on, you are not offering at all, is that correct, Counsel?

Mr. Dunn: I haven't offered it.

Mr. Carr: Well, if you don't intend offering it, I won't go into it.

The Court: No. It has not been offered.

Mr. Carr: But I want to avoid calling this witness back, your Honor. That is what I had in mind.

The Court: Ursich testified that he didn't make a bet with that.

Mr. Carr: Very well.

The Court: He said he didn't remember making a bet with that.

Q. (By Mr. Carr): Now, Exhibit 16, I see this is a check, December 14, for $100.00, and on the back there is something here about "Club Royal"

(Testimony of Andre E. Anderson.)

stricken out, with marking through it, with "A J Kahn" in pencil and then [222] "A E Anderson." Is that your signature? A. That is correct.

Q. Then, what happened to that check?

A. Well, we have a cash box that we used to take money out of, to cash checks, and if there was sufficient in that, we put it in that, and sometimes there is not sufficient in it and I have to go to the bank.

Q. What happened to that check?

A. Well, there wasn't enough money in there, or it was at the time of day when it wasn't too late to go and get the money, or it might have been a good night and we needed the money, then, to cash checks, and I went to the bank and cashed it.

Q. What did you do with the money when you got it? A. Gave it to Mr. Ursich.

Q. I show you Exhibit 17. Dated December 14, for $50.00, and on the back of this check it is just endorsed "A E Anderson." Is that your signature?

A. Yes.

Q. Do you know whether or not that was taken to the bank or cashed at the bank?

A. That check was taken to the bank; I took it myself. He asked me would I go to the bank and cash it.

Q. Who did? A. Babe Ursich. [223]

Q. And what did you do with the cash?

A. I gave it to him.

Q. To whom?

(Testimony of Andre E. Anderson.)

A. He was sitting at the bar.

Q. To whom? A. Babe Ursich.

Mr. Dunn: Is that 17?

Mr. Carr: That is 17. May I withdraw that testimony, your Honor. I am sorry.

Q. I show you next Exhibit 19, Mr. Anderson. This is a check for $100, and on the back is written "A J Kahn" in pencil, and an endorsement in ink "Andre Anderson." Who is that?

A. That is me.

Q. And will you state what happened with respect to this check, please?

A. Well, Mr. Kahn happened to come in, and at the time he wrote a check, I don't believe Mr. Kahn was in.

Q. Who wrote the check?

A. Babe. Babe wrote the check, but Mr. Kahn stepped in. So he said, "Never mind going to the bank. I will get A. J. to cash it." But A. J. O K'd it and then said, "Go ahead, you go to the bank, because I haven't got no money."

Q What did you do?

A. I went to the bank and got the money. [224]

Q. And what did you do with the money?

A. Gave it to Babe.

Q. Babe who? A. Ursich.

Q. The next exhibit is Exhibit 30 which is for $460 and on the back in ink is "A E Anderson." Whose signature is that? A. That is mine.

Q. Tell me what happened with respect to that check.

(Testimony of Andre E. Anderson.)

A. Well, I went to the bank, got the money for Babe, and brought it back to him.

Q. Did you give it to Babe personally, that $460? A. Yes, sir.

Q. I notice in some cases that A. J. Kahn's name will appear on the checks and then yours, and there are some other checks on which just your name will appear. Was there any particular reason for that?

A. Yes, sir.

Q. What was it?

A. When my name only is on it, he asked me to go to the bank and cash the check.

When Mr. Kahn happened to be in there, I would get his OK on the check, because I figured it would be easier to cash it with Mr. Kahn's signature on it.

Q. In other words, the procedure was, when Mr. Kahn [225] was there, to get him to OK it first?

A. That is right. Otherwise, I might not want to go to the bank, I figured maybe Mr. Kahn has enough money to cash it so I won't have to go to the bank, so I will go later on. I go to the bank lots of times and get change from the bank, and I just make one trip instead of making separate trips.

Q. I don't know whether I asked you or not, but I will ask it hurriedly, did you ever see Mr. Kahn during the period from 1953, say, July, 1953, through the period of 1954 ever take bets, to your knowledge, on a horse from Babe?

A. I never seen him, no, sir.

Q. Did you see Babe make any bets with the other bookmakers there? A. Yes, sir, I did.

(Testimony of Andre E. Anderson.)

The Court: What do you mean by "the other bookmakers"?

Mr. Carr: Well, I am using the expression that counsel used. We don't have a jury, and I was being a little facetious. I hope I don't hurt my case by being so. May I withdraw that, your Honor?

The Court: Yes.

Q. (By Mr. Carr): You have worked there at that place, you have said, ten years?

A. Yes, sir. [226]

Q. Are you a member of any union?

A. Yes, sir, of the Cooks and Waitresses Union.

Q. Do you feel that you are dependent upon Mr. Kahn's say-so whether or not you can get a job?

A. I can get a job any place.

Mr. Carr: May I have just a second, your Honor?

Q. By the way, do you know a man by the name of Monze (M-o-n-z-e)? A. Yes, I do.

Q. Do you know what his occupation is?

A. He works in the card room.

Q. Well, just how do you label him, is he a player or runner or what?

A. No. He works for the man who owns the club room, the card room.

Q. And what is that man's name?

A. Tex Cook.

Q. And is Tex Cook also a bookmaker?

A. Well, in a way, yes. I have made some bets with him myself.

Q. By the way, I will show you Exhibits 20, 21

(Testimony of Andre E. Anderson.)

and 25, all of which have on the back these endorsements, or "A S Monze." Would you be able—I don't know whether you would be able or not—would you be able to identify those [227] endorsements?

A. I have seen his name only once, and it is similar to this.

Q. Did Mr. Monze, as far as you know, ever come into the place?

A. Oh, yes, he came in for coffee, lots of times

Q. I am talking now about the Club Royal.

A. No, sir. He would just drop in there and get some change and get a cup of coffee, something like that.

Q. And where is Monze's place?

A. Well, he works in the card room just around about two doors from our place.

Q. And that is where Tex Cook's place is?

A. Yes, that is Tex Cook's place.

Q. And I take it, then, what you mean is that Monze would drop into the Club Royal from time to time? A. Yes.

Q. Now, I will show you, Mr. Anderson, Exhibit No. 9 and here is a check for $200, and the endorsement on it is "John H Willson." Do you know a Willson, John H. Willson? A. Yes, I do.

Q. And who is John H. Willson?

A. Well, they call him Low Ball.

Q. Low Ball?

A. He is supposed to be a bookmaker.

Q. Do you recognize that handwriting? [228]

(Testimony of Andre E. Anderson.)

A. Yes. I think that is his handwriting.

Q. Then I show you here a check. I think this is "J. J. DeKeyser," is that what that is?

A. Yes, sir.

Q. Do you know if J. J. DeKeyser, that is the endorsement on Exhibit 22—— A. Yes, sir.

Q. Do you know J. J. DeKeyser?

A. Yes, sir, I do.

Q. That is Boots? Is that Boots?

A. That is Boots DeKeyser, yes, sir.

Q. What is his occupation?

A. He has a bar they call the Black and Gold.

Q. And does he do bookmaking?

A. Some people do. He won't take my bets. I don't know why he doesn't want my action. Maybe I am too good a horse player.

Q. By the way, what is the address of the Club Royal? A. 1070-3d.

Q. Now, around that area, how many places, similar places, bars or cardrooms are there?

A. There is only one card room.

Q. Well, how many similar types of bars as the Club Royal?

A. Well, there are bars in that block, there is [229] nothing but bars, outside of one eating place next door, all the rest of them are bars.

Q. Isn't there a nickname for that along there?

A. Well, it is just Third Street.

Q. Well, is there a nickname for it?

A. Well, that is where, if you want a little action in horse racing, that is where everybody hangs out.

(Testimony of Andre E. Anderson.)

Q. You mean not just the Club Royal.

A. No, sir.

Q. But in the whole row, is that right?

A. In fact, you can't get by the corner without running into somebody with a sheet.

Mr. Carr: All right, that is all.

Mr. Dunn: Wait a minute, Mr. Anderson.

Cross-Examination

By Mr. Dunn:

Q. Have you ever placed any bets with Mr. A. J. Kahn? A. No, sir.

Q. Never? A. No.

Q. Mr. Anderson, with whom have you discussed your testimony before you came into Court here today? A. With you and——

Q. You have never talked it over with me.

A. No. I mean with Mr. Dunn. [230]

Q. My name is Dunn, but——

A. Somebody came to me there, and I discussed it with him at the Club Royal and there was two men there and they took down my statements.

Q. Mr. Hoopman, I believe, took your statement? A. Yes.

Mr. Carr: I will set you right. There was a Joe Dunn, who was a former FBI man.

Mr. Dunn: Oh——

Mr. Carr: Who was sent down to interview him.

Mr. Dunn: Well, this is not an FBI case.

Q. Well, you have discussed it with counsel,

(Testimony of Andre E. Anderson.)

haven't you? A. Yes.

Q. And you have discussed it with the Kahns?

A. Yes, he asked me——

Q. Mr. A. J. Kahn?

A. Mr. Kahn asked me——

Q. Did he tell you what to testify here in Court?

A. No, sir, he did not. He said to tell the truth.

Q. Well, don't you always tell the truth?

A. Yes, sir.

Q. Especially when you are under oath?

A. Yes, sir.

Q. Do you recall the statement that you made to [231] Mr. Hoopman on the 24th of February, 1955? A. I believe I do.

Q. And you told him the truth at that time?

A. Yes, sir.

Q. Well, just a moment, and I will show you your statement, Mr. Anderson, and see if you would like to correct the testimony that you have given here in Court today.

May I have this marked as the Government's Exhibit next in order, if the Court please?

The Clerk: Government's Exhibit 34.

(Said document was marked Government's Exhibit No. 34 for identification.)

Q. (By Mr. Dunn): Now, Mr. Anderson, I place before you Government's Exhibit 34 for identification, and I will ask you to read that exhibit before I ask you the next question.

(Testimony of Andre E. Anderson.)

(The witness examined said document.)

Q. (By Mr. Dunn): Have you read it?

A. Yes.

Q. Now, did you make this statement to Mr. Gordon Hoopman on February 24, 1955?

The Court: Are you referring to the entire statement?

Mr. Dunn: Well, I am just asking whether he made the entire statement, yes, your Honor, trying to establish [232] the facts of the statement.

The Court: Foundational?

Mr. Dunn: Yes, your Honor.

The Court: Is it signed?

The Witness: Yes, it is signed.

The Court: Let him look at his signature.

Q. (By Mr. Dunn): Is this your signature?

A. That is my signature.

Q. And didn't Mr. Hoopman come, in the presence of and with Mr. Leeds, is that correct, on February 24, 1955, in the Club Royal, and interview you? A. That is correct, yes.

Q. And after he interviewed you, didn't he write this out and have you read it and then ask you whether or not it was true and whether you swore to it, and didn't you then take an oath in which you said that the statements made in this affidavit were true and correct?

A. I did not say anything about Mr. Kahn takin horserace bets at all.

Q. Well, you read the statement at the time?

(Testimony of Andre E. Anderson.)

The Court: Don't go into the statement itself until you read that portion of it, so it will be in the record.

Mr. Dunn: Yes.

The Court: It doesn't mean anything to me at all until you read the portion that you refer to. [233]

Mr. Dunn: All right.

Q. Then referring to it, you did sign this statement?

A. I signed the statement, yes, but they showed me a lot of checks I had signed, and gave them to me one by one and I made a statement that I took all these different checks to the bank and cashed them and I took the same money, the cash for these checks, and brought it back, and I gave it to Babe Ursich.

The Court: Of course, all of that is not responsive to the question.

Mr. Dunn: I will ask that the balance of the statement be stricken, your Honor.

The Court: The balance may go out.

Q. (By Mr. Dunn): Showing you this line which states, "I saw Hubert Ursich place bets with A. J. Kahn on horse races on several occasions," in truth and in fact didn't you make that statement to the investigators at that time?

A. I said I didn't see anybody. In fact, I didn't even admit——

The Court: Just answer the question.

(Testimony of Andre E. Anderson.)

The Witness: I didn't admit of seeing anybody at any time taking bets in there.

The Court: That isn't the question. Read the question.

(Question read by the Reporter.)

The Court: The only question is, did you make that [234] statement?

A. I don't believe I did.

The Court: All right.

The Witness: To my best knowledge, I only——

The Court: You have answered it. Now, the statement is admissible in evidence.

Mr. Dunn: Yes, your Honor. I would also like to ask him some other matters. May I have the checks which he was shown?

Mr. Carr: We haven't the checks here.

Mr. Dunn: The ones you were using to interrogate the witness.

Mr. Carr: No. I think they were all passed up to the Court.

The Clerk: Here are some more, Mr. Dunn.

Mr. Carr: May I peruse this for a moment, counsel?

Mr. Dunn: Yes, the statement.

Q. Now, Mr. Anderson, I show you Government's Exhibit No. 30 for identification, and I will show you Government's Exhibit No. 34 for identification. I will refer you to the date on Government's Exhibit 30 for identification, which is March 18, 1954.

(Testimony of Andre E. Anderson.)

The Court: No. 30 is in evidence, isn't it?

Mr. Dunn: No, your Honor. This one was not offered up to now. [235]

The Court: All right.

Q. (By Mr. Dunn, continuing): For $460, March 18, 1954, and I will read to you from the statement in Government's Exhibit 34 for identification, which is as follows, in part: "I recognize my signature on the checks signed by Hubert Ursich listed below," and then "March 18, 1954, $460," and you stated further at that time, "I went to the bank and cashed these checks for Mr. A. J. Kahn and gave him the money when I returned from the bank."

Now, isn't that the statement that you made to the investigator at the time that he talked to you in 1955? A. No.

The Reporter: What was the answer?

The Witness: I do not recollect that that was the question that was put to me when I signed that statement there. I don't even remember of putting it that way at all when they asked me to sign that paper.

Q. (By Mr. Dunn): And didn't he show you at the time that he asked you these questions, photostatic copies—— A. Yes.

Q. ——of the checks, including Government's Exhibit No. 30 for identification?

A. Yes, that is right.

Q. And you identified your signature at that time? A. Yes, I did. [236]

(Testimony of Andre E. Anderson.)

Q. And you took that check down to the bank, you went to the bank, and you brought the money back to Mr. Kahn and not to Mr. Ursich, isn't that true?

A. On some occasions Mr. Kahn was there and I gave it to him and he turned around and took out his part and gave the rest to Ursich.

Q. Now, referring to Government's Exhibit No. 1, which appears to be dated September 4 or September 9, 1953, and reading from the same place, you identified a check for $50.00 in the same amount, in Exhibit No. 34, for September of 1953, for $50.00. Didn't you actually take that check to the bank, cash it, and bring the money back to Mr. A. J. Kahn? A. No, sir.

Q. Your answer is? A. "No."

Q. You made that statement in Government's Exhibit No. 34 for identification, did you not?

The Court: Counsel, may I interrupt. You say he made that statement. The proper way for impeachment is to read the question and the answer and then ask him if he was asked that question and made that answer. I can't tell, when you say, "You made that statement," I don't know what you are talking about. The proper form of impeaching is to say, "I am reading now from the statement [237] which you previously identified," and read the question and read the answer, and say, "Were you asked that question and did you give that answer?"

Mr. Dunn: I will.

The Court: If he says he did not, then you can

(Testimony of Andre E. Anderson.)

offer it in evidence to prove it. If he says he did, that ends it, except he has a right to explain it if he wants to.

Q. (By Mr. Dunn): I will further read from Government's Exhibit No. 34 for identification at this time, in which you stated, "I recognize my signature on the checks signed by Hubert Ursich listed below:

"September 8, 1953.....$120.00
September 9, 1953..... 50.00
December 14, 1953..... 50.00
December 14, 1953..... 100.00

"I went to the bank and cashed these checks for Mr. A. J. Kahn and gave him the money when I returned from the bank."

Now, wasn't that the statement that you made to the investigators on February 24, 1955?

Your answer is?

The Court: You may answer the question.

A. Your Honor, I don't recollect putting it in that way there, because I told him, I says, those are my checks and I cashed them for the man and went to the bank, and lots of times Mr. Kahn would be there and Babe was standing [238] alongside of him, and I would walk over to him and hand him the money.

The Court: All right. It is your statement that you did not make that statement?

A. Well, I don't recollect whether I did or not. I never noticed that line there.

The Court: If you say you did make that state-

(Testimony of Andre E. Anderson.)

ment, then you may explain it if you wish, but if you didn't make that statement, that ends it.

Did you or did you not make that statement?

A. I don't believe I did, sir.

Mr. Carr: I didn't get the answer, sir.

The Court: "I don't believe I did, sir."

Mr. Dunn: Yes.

Q. I show you Government's Exhibit 2, a check of September 8, 1953, for $120, and ask you whether or not at the time that you were interviewed by Mr. Hoopman you didn't see a photostat of that check?

A. It is on there, because I went over the number of the checks.

Q. And didn't you identify your signature——

A. Yes, I did.

Q. ——on the back? A. Yes, I did.

Q. Now, I show you Government's Exhibit No. 1, which [239] appears to be dated September 9 or September 4, 1953, for $50.00 and ask you whether or not you weren't shown a photostat of that at the time they interviewed you? A. I was, sir.

Q. And didn't you identify your signature on the back of that? A. I did.

Q. I ask you the same two questions with reference to Government's Exhibit 16, a check dated December 14, 1953, for $100? Your answer is——

A. The same, sir.

Q. And the same questions with reference to Government's Exhibit 19, a check of March 4, 1954, for $100? A. Yes.

(Testimony of Andre E. Anderson.)

Mr. Dunn: At this time the Government offers Exhibit No. 34 for identification in evidence.

The Court: It will be received.

(Said document was received in evidence as Government's Exhibit No. 34.)

Mr. Dunn: And the Government will also at this time offer Government's Exhibit No. 30, a check for $460. The testimony on that, if you will recall, on direct, in chief, was that it was the check which the witness Ursich had given to the defendant A. J. Kahn to be cashed and that the money was for a horse race bet. [240]

On cross examination, he wasn't sure because the signature "A E Anderson" appeared on the check, he wasn't sure that that check had actually been given to Kahn.

Now, the statement of this witness, based on Exhibit 34, is that he took this and gave the money to Kahn.

On that basis we are offering it.

Mr. Carr: May I address the Court?

The Court: Yes.

Mr. Carr: Exhibit 34, as I understand, has no probative value at all insofar as proving that statement on Exhibit 30. Here is what the witness Ursich said: "I take exception and retract this exhibit, I withdraw that, what I said about that check." So I don't see how Exhibit 34 can support that exhibit.

The Court: Objection overruled. It will be re-

(Testimony of Andre E. Anderson.)

ceived. Insofar as Exhibit 34 is concerned, of course, 34 is the statement which he has made and which he has signed. Ordinarily it would be hearsay——

Mr. Carr: I am not objecting to that.

The Court: You are not objecting to the statement?

Mr. Carr: No. I was objecting to No. 30.

The Court: I realize that. I thought you said you object to 34 and 30?

Mr. Carr: No. Just to 30.

The Court: The objection is overruled. Both 34 and 30 [241] are received.

(The check heretofore identified as Government's Exhibit No. 30 for identification was received in evidence as Government's Exhibit 30.)

Mr. Dunn: No further questions.

Mr. Carr: May I have a moment, your Honor?

Redirect Examination

By Mr. Carr:

Mr Carr: May I have the statement, Exhibit 34, please?

Q. Mr. Anderson, who was it that interviewed you, Mr. Hoopman, when you made this statement?

A. Yes, sir.

Q. Mr. Hoopman sat down and talked to you quite some time before the statement was written up, didn't he? A. Correct.

(Testimony of Andre E. Anderson.)

Q. And did he go over somewheres and leave you alone and write this statement up?

A. No. The other fellow was talking to me at the time.

Q. While this was being written up?

A. Yes. While he was writing it up, and he said, "Will you sign it?"

Q. When this was brought back for you to sign it, did you read the statement? [242]

A. We just went down over the number of checks, and he pointed out the different checks and the number of the checks.

Q. Do you remember who wrote in this material in the handwriting here?

A. No, I don't remember which one it was. The gentleman that was talking to me at the time.

Q. And the other man you say was talking to you while Mr. Hoopman was writing this?

A. Yes.

Q. Then, when he put it over in front of you and swear to this, in which case the checks were read to you, did you read this other handwriting here?

A. I don't remember reading the bottom. I was talking at the time and I just figured he just had reference to the checks.

Mr. Carr: That is all.

Mr. Dunn: No further questions.

The Court: We will take a five-minute recess.

(Recess.)

Mr. Carr: Mr. Welch.

Mr. Dunn: If the Court please, may I just interrupt for one moment to inquire whether it is possible to permit Mr. Zimmerman to go?

The Court: Yes, Mr. Zimmerman may be excused. [243]

PERCY ELLIS WELCH

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give us your full name, please.

A. Percy Ellis Welch.

Direct Examination

By Mr. Carr:

Q. Mr. Welch, what is your occupation?

A. I am a porter.

Q. Where?

A. I am a porter at Delmar Race Track, now.

Q. Well, in 1953, in the fall, early summer and fall and up until say June-July of 1954, what was your occupation?

A. I was a porter at the Club Royal from '48 until May of '54.

Q. And did you work around the place, the Club Royal any during the daytime?

A. Occasionally I would be there. On Mondays I went to the bank to make the deposits for Mr. Kahn, and on Tuesdays, I had deliveries, the bar deliveries would come in, and on Tuesdays and Fridays, I would be there until about 11:00.

Q. Did you ever on any occasion cash any checks,

(Testimony of Percy Ellis Welch.)

go to the bank for the purpose of cashing any checks? [244] A. Occasionally, yes.

Q. I want to show you here Exhibit 14, which is a check dated December 14, for $400. I see the name "Percy E. Welch" on it. Is that your signature?

A. That is mine.

Q. And I notice it has "3335 Steele St". What is that? A. That is my home address.

Q. And do you know why you put your name on the back of that check?

A. Mr. Hubert asked me to go to the bank.

Q. Mr. who?

A. Mr. Hubert Ursich. We called him Babe.

Q. Babe? A. Yes.

Q. You mean Ursich? A. Yes.

Q. Ursich? A. Yes.

Q. You have got me off, too. A. Ursich.

Q. Ursich?

A. Ursich. yes, that is it.

Q. He asked you to go to the bank and do what?

A. And cash the check for him. [245]

Q. And did you do that? A. I did.

Q. And I notice it is for $400, and what did you do with the $400? A. I gave it to him.

Q. Now, next I want to show you an exhibit, which, by the way, is dated the same day, and the exhibit is No. 15, December 14, for $400, and I notice on the back the name "Percy E. Welch". Do you recognize that name?

A. That is my name.

Q. And I notice the same address there.

(Testimony of Percy Ellis Welch.)

A. My home address.

Q. Can you explain what happened in regard to that check?

A. That check—both of those checks was cashed within from the time the bank opened until about 10:30.

Q. And what did you do with the money on that check? A. I gave it to Mr. Ursich.

Q. Ursich? A. Ursich.

Q. Ursich, I mean Babe. A. Yes.

Q. By the way, did you ever at any time go over to Tijuana in connection with placing any bets for Mr. Ursich? A. Once, once. [246]

Q. What? A. Once.

Q. Do you remember about when that was?

A. No, I don't; I don't remember.

Q. Do you remember approximately how much money you took over to make the bet?

A. I taken $100.

Q. $100? A. Yes.—

Q. And did you have any checks? A. No.

Q. Only money?

A. It was cash. He gave me cash.

Q. With respect to Mr. Ursich being around the bar there, did you ever see him around the bar on several occasions, or was it just on these occasions when he cashed these checks?

A. No. He was in quite often, when he wasn't out at sea.

Q. Did you ever see him lay any bets with any bookmakers there at the Club Royal?

(Testimony of Percy Ellis Welch.)

A. Yes, I have seen him place some bets.

Q. By the way, do you know a fellow named "The Greek"?

A. Yes, that is George. [247]

Q. George The Greek?

A. George Gordon is his name.

Q. What is his occupation, if you know?

A. Well, he is in that business.

Q. What business?

A. Booking business.

Q. And did you personally ever see any bet made by Ursich with George the Greek?

A. No—yes, one, one bet.

Q. How much of a bet was that, if you remember? A. It was a $500 bet.

Q. Did you ever at any time see Mr. Ursich make a bet with Mr. A. J. Kahn?

A. No, sir.

Q. By the way, when you brought the money back on these two checks, Exhibits 14 and 15, was Mr. A. J. Kahn in the place at the time?

A. No, sir. Mr. Kahn wasn't around there. That was between 10:00 and 10:30 when I cashed those two checks, and Babe and Red Siegel were there and I don't remember who the other guy was.

Q. Did what?

A. Was there in the office during that time.

Q. And did you see what Babe did with this $800? [248]

A. No. I gave it to him and I had to go home, and I had something else to do.

Mr. Carr: That is all, your Honor. That is all the direct.

Mr. Dunn: I have no questions, your Honor.

Mr. Carr: All right. We will call Mr. Julius Kahn.

JULIUS KAHN

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give us your full name.

A. Julius Kahn.

Direct Examination

By Mr. Carr:

Q. Mr. Kahn, you are Julius Kahn?

A. Yes.

Q. And you are the son of whom?

A. Mr. A. J. Kahn.

Q. The defendant here. What is your occupation, Mr. Kahn?

A. I am an officer and general manager of a liquor store chain.

Q. What is the name of that corporation?

A. Texas Liquor Stores, Incorporated.

Q. And does that have any ownership in the Club Royal? [249]

A. It does at the present time.

Q. In 1953, in, say, from September, '53, through, up until, say, July 1, 1954, particularly at that time, who were the owners of Club Royal at that time, if you know?

A. Myself and Albert Bertolino.

(Testimony of Julius Kahn.)

Q. Was it a partnership? A. Yes.

Q. And what position did Mr. A. J. Kahn have with respect to that?

A. He was the manager.

Q. Was he paid as the manager?

A. Yes, he was.

Q. Do you remember what his salary was at that time? A. $500 a month.

Q. Speak a little louder.

A. $500 a month.

Q. And who else participated in managing the place, if you know? A. Al Bertolino.

Q. And did Mr. Yale Kahn have anything to do with it at that time? A. Yes, he did.

Q. What?

A. He was floor manager, that is my cousin Yale, not brother Yale Kahn. [250]

Q. I am sorry. I mean your cousin Yale. That is not your brother. A. That is correct.

Q. As I understand, there are two sets of boys in the Kahn families? A. Yes.

Q. They are both named Yale——

A. Yes, sir.

Q. ——and Irvin, is that right? A. Yes.

Q. Now, Mr. Kahn, do you recollect some affair having to do with a bet, an alleged bet on a horse named Imbros that was supposed to have occurred sometime back in March of 1954, did you ever hear about it?

A. I heard about it two or three weeks later.

Q. Who first called it to your attention?

(Testimony of Julius Kahn.)

A. Mr. Walker Atwell.

Q. Mr. Walker Atwell? A. Yes, sir.

Q. And as a result of that, did you see or talk to him and Mr. Ursich?

Mr. Dunn: I object to the form of that question. It calls for a conclusion of the witness, your Honor, "and as a result of that"——

The Court: The objection is overruled. [251]

Q. (By Mr. Carr): Later, after talking to Atwell, did you have a conversation with either Ursich—— A. Yes.

Q. ——or Atwell? A. Yes, sir.

Q. And were they together or alone?

A. They were separate.

Q. Separate; and who did you talk to first?

A. First, Mr. Atwell called me on the telephone. He——

Mr Dunn: Just a moment. I am going to object to any conversation with Mr. Atwell as being hearsay, your Honor.

The Court: He hasn't asked for conversation.

Mr. Dunn: Well, he started to.

The Court: All right.

Mr. Carr: Well, I think in this particular instance, it is an exception to the hearsay rule. We are trying to show it here. Mr. Ursich testified about what Atwell had to do with it. We are trying to show the facts.

The Court: You can't show the facts by hearsay evidence, Counsel.

(Testimony of Julius Kahn.)

Mr. Dunn: He had started. Of course, if he had answered the question——

The Court: All right, he can say he had a conversation with Mr. Atwell. [252]

Mr. Carr: Well, I will put it in this fashion, then:

Q. Is it a fact that at some time after March——

The Court: Now, this is bound to be a leading question.

Mr. Dunn: I object to it on that ground.

Mr. Carr: It has to be. That is the only way to ask an impeaching question, by leading. You have to lead.

The Court: Are you trying to impeach this witness?

Mr. Carr: No. I am not. I am trying to impeach Ursich. That is the only way you can impeach him.

The Court: Counsel, you haven't laid any foundation for the impeachment of Mr. Ursich. If you mean by that, that you are impeaching a statement made by Mr. Ursich, then, of course, you haven't laid a foundation for that.

Mr. Carr: Well, I thought I was doing it. I was going to ask him if——

Q. Did you see Mr. Ursich in March of 1954?

A. I believe it was the early part of April, sir.

Q. The early part of April, 1954. I want to ask you if at that time Mr. Ursich said to you that if your brother, Yale Kahn, did not pay the bet of Imbros, that he was going to take it out on your father?

(Testimony of Julius Kahn.)

Mr. Dunn: I object to it as a leading question, your Honor.

The Court: Well, I think there was a foundation laid [253] for that particular question. My recollection is that he did ask Mr. Ursich if he had not said to one of the Kahns, and I assume that it was this witness——

Mr. Carr: That is correct, your Honor.

The Court: Then, he laid a foundation.

Mr. Dunn: All right, with that, I withdraw the objection.

The Court: To that specific question?

Mr. Dunn: If that was the specific question.

A. That is specifically what he said. He said he was going to the Internal Revenue if my brother Yale did not pay the bet, to report my father.

Q. (By Mr. Carr): Is that the only time he ever made that statement to you?

A. Mr. Ursich?

Q. Yes.

A. Yes, that is the only time I had ever seen him, the first time I had ever met him.

Mr. Carr: No further questions.

Cross-Examination

By Mr. Dunn:

Q. In whose presence was this statement made, Mr. Kahn? A. We were alone.

Mr. Dunn: On that ground, your Honor, I am going to [254] move to strike the answer, because the question I recall quite distinctly was whether or

(Testimony of Julius Kahn.)

not in the presence of Atwell and Julius this conversation took place, and he denied that.

The Court: The motion is denied.

Mr. Carr: I thought Ursich said that they were alone. It may be I am not remembering the testimony correctly, but that certainly is not a ground to strike this.

The Court: Counsel, don't argue after I have ruled. I have ruled on the motion.

Mr. Carr: I didn't hear you, your Honor. I am very sorry, and I am sorry you are so impatient with me, because I am feeling terrible myself this morning.

The Court: I am not impatient with you.

Mr. Dunn: I have no further questions, your Honor.

Mr. Carr: I certainly did not intend it in that way.

The Court: Now, don't start any more argument, Mr. Carr. I don't care to argue with you.

Mr. Carr: I am not arguing. I was only intending to apologize.

The Court: I have ruled and that ends it.

Mr. Carr: Very well, sir.

Mr. Irvin Kahn. [255]

IRVIN J. KAHN

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give us your full name.

A. Irvin J. Kahn.

Direct Examination

By Mr. Carr:

Q. Mr. Kahn, what is your occupation?

A. Attorney at law.

Q. Where do you practice?

A. In San Diego.

Q. Are you a son of Mr. A. J. Kahn?

A. I am.

Q. How long have you been a lawyer in San Diego? A. Since 1938.

Q. Are you still licensed to practice?

A. I am, sir.

Q. Do you know a man by the name of Ursich?

A. I do.

Q. I want to show you Exhibit No. 11, which is a check for $100, and on the back is "Eleanor Kahn". Do you recognize that endorsement?

A. I do, sir.

Q. And then next is an endorsement. What is that? Can you read it? [256]

A. "H. Verdugo".

Q. Do you recognize that endorsement?

A. Not the signature, sir. I recognize the name.

Q. What is the name?

A. Hector Verdugo.

Q. And did you ever see that check, Mr. Kahn?

(Testimony of Irvin J. Kahn.)

A. Yes, I did, sir.

Q. When was the first time you ever saw it?

A. The day that was given to me by Mr. Ursich.

Q. Where did that occur?

A. At the Club Royal.

Q. How did you happen to be at the Club Royal?

A. I happened to walk in there. I happened to walk in there.

Q. And did Mr. Ursich approach you?

A. Yes, sir.

Q. And what did he say to you?

A. He asked me if I could cash a check for him.

Q. And what did you do?

A. I cashed the check for him, sir.

Q. And is this the check, Exhibit, I think that is 11, isn't it? Am I correct?

A. That is correct.

Mr. Dunn: That is right.

Q. (By Mr. Carr): This Exhibit 11 is the check that [257] you received when you cashed the check for Mr. Ursich? A. It is, sir.

Q. What did you do with the check?

A. Gave it to my wife.

Q. And is Eleanor Kahn your wife?

A. Yes, sir.

Q. How did you happen to give it to your wife?

A. She wanted to pay some bills, and I gave her some money out of my pocket. This happened to be it. I might say that Hector Verdugo is Hector's Cleaners, our cleaner, has been our cleaner for many years.

Mr. Carr: No further questions.

Mr. Dunn: I have no questions, your Honor.

The Court: You may step down. We will recess until 2:00 P.M.

Bring all the exhibits in chambers, Mr. Clerk.

(And thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 p.m. of the same day, September 6, 1956.) [258]

Thursday, September 6, 1956, 2:00 P.M.

The Court: You may proceed.

Mr. Carr: Your Honor, I wanted to recall Mr. Julius Kahn. He made an error in his testimony, but I see he is not here and if we may call him later, we will proceed with the other witnesses.

The Court: Very well.

Mr. Carr: Go ahead.

Mr. Danielson: Mrs. Ann Marcos, please.

ANN MARCOS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give us your full name, please.

A. Ann Marcos.

Direct Examination

By Mr. Danielson:

Mr. Danielson: May we have Exhibit No. 10, Mr. Clerk?

Q. What is your occupation, Mrs. Marcos?

A. I am a restaurant owner.

Q. Mrs. Marcos, where is this restaurant located? A. On Third Street.

Q. In San Diego? A. Yes.

Q. Is that the Turf Cafe? [259]

A. Yes, sir.

Q. Were you so employed during 1953 and 1954?

A. Yes, sir.

Q. I hand you an exhibit marked Plaintiff's Exhibit No. 10 and ask you, please, to examine it? Do you recognize that check? A. Yes, I do.

Q. When and where did you first see it, Mrs. Marcos?

A. It was given to me in the restaurant.

Q. That is at the Turf Cafe?

A. That is right.

Q. By whom was it given to you?

A. Babe.

Q. Is that Babe Ursich?

A. That is right.

Q. And was there any conversation that you had with Babe at the time he gave you that check?

A. He came in and had breakfast, he had ham and eggs, and a bottle of beer, and he only had 25 cents with him, and he said, "Can you cash a check?" So I cashed this check for him.

Q. And to whom did you give the money?

A. To Babe.

Q. That was $50.00, was it? A. Yes. [260]

Q. Do you know what he did with it?

A. No, I don't.

Q. Do you know what you did with the check after Babe left?

(Testimony of Ann Marcos.)

A. Yes. My daughter came in, and she wanted to go and do some shopping, Christmas shopping, so I didn't have to much cash. I had currency, so I gave her this check.

Q. And her name is what?

A. Kay Marcos.

Q. Now, do you know Eddie Qualin?

A. Yes, sir.

Q. Do you know his occupation?

A. Yes, sir.

Q. What is he? A. A fisherman.

Q. Directing your attention to a time about a month or two months ago, did you have a conversation with Eddie Qualin in the Turf Cafe?

A. A month ago.

Q. All right. At about what time of day or night was this?

A. Oh, it was around 11:00 o'clock at night.

Q. Who was present?

A. Oh, there were several customers. [261]

Q. Did anyone else take a part in the conversation which you had with Eddie Qualin?

A. No. They just listened.

Q. Now, Mrs. Marcos, at that time did Eddie Qualin make a statement to you in substance and effect as follows, relative to A. J. Kahn:

"I am going—I have been subpoenaed to testify in the A. J. Kahn case. We are going to get that Jew S.O.B. and give him a real going over"?

A. Yes, sir. He said that, he said——

(Testimony of Ann Marcos.)

The Court: Just a moment. Answer the question. Read the question.

(Question read by Reporter.)

The Witness: Yes, sir.

The Court: What was the answer?

A. Yes, sir.

Mr. Danielson: No further direct examination.

Cross-Examination

By Mr. Dunn:

Q. Mrs. Marcos, how many checks do you handle a day in your cafe?

A. Oh, sometimes we handle three or four, sometimes more.

Q. And you are there every day, are you?

A. Yes, sir. [262]

Q. You participate in the business?

A. Yes, sir.

Q. Do you remember the circumstances surrounding every check that you get?

A. Yes, I do.

Q. Do you remember each and every one that you get very clearly, the circumstances surrounding it? A. Yes, sir.

Q. Do you recall with each individual what they eat when they are there?

A. Well, I can remember he was the only customer I had that morning in there.

Q. What was the date on which you received the Government's Exhibit 10?

(Testimony of Ann Marcos.)

A. The first of December.

Q. What year? A. 1953.

Q. And is it your practice to pass checks along without endorsement when they are business checks?

A. No, because it was made out to cash.

Q. Do you commonly not endorse a check that has been made out to cash?

A. Well, we do when we make a deposit to the bank, but I gave it to my daughter.

Q. Where does your daughter live, Mrs. Marcos?

A. 2808, with me.

Q. 2808 Dove Street. And where is that?

A. San Diego 1, California.

Q. As a matter of fact, doesn't she live also at 3365 Sixth Avenue or 3366 Sixth Avenue, San Diego? A. No, sir.

Mr. Dunn: No further questions.

Mr. Danielson: Miss Kay Marcos, please.

KAY MARCOS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give us your full name, please.

A. Kay Marcos.

Direct Examination

By Mr. Danielson:

Q. What is your occupation, Miss Marcos?

A. Secretary, Assistant Bookkeeper at Texas Liquor Stores.

(Testimony of Kay Marcos.)

Q. You are the daughter of Mrs. Ann Marcos, who has just testified, are you not?

A. That is right.

Q. I direct your attention first of all to Exhibit No. 10, a check for $50.00, which is before you on the witness stand, and ask you to examine it and the endorsements [264] on the back side. Do you recognize the endorsement "Kay Marcos" on that check?

A. Yes.

Q. Is that your endorsement? A. Yes.

Q. Where did you first see that check?

A. When my mother gave it to me.

Q. And what did you do with it?

A. I went shopping.

Q. Did you endorse it and pass it at Hafter's Department Store? A. That is right.

Q. Now I direct your attention to Exhibit No. 29, which is the other check before you on the witness table. Please look it over. Do you recognize that check? A. Yes.

Q. When and where did you first see that check, please? A. In the Club Royal Office.

Q. And who was present at the time?

A. Mr. Kahn and myself and Mr. Ursich.

Q. Mr. Babe Ursich? A. That is correct.

Q. Was there any conversation about the check at that time, by any of you? [265]

A. Well, I had gone in there to use the telephone, I was sitting behind the desk and Mr. Kahn was sitting at the other desk and Babe was sitting at this lounge in the office, and after I made my

(Testimony of Kay Marcos.)

phone call, Babe had gone up to Mr. Kahn and asked him if he could cash this check, so Mr. Kahn turns to me, he said, "Kay, would you mind going over to the bank and cashing this check?"

I said, "OK."

And i went over to the bank and I endorsed the check, "Texas Liquor Stores," Incorporated, "By Kay Marcos, Bookkeeper," and when I presented it to be cashed, they told me I couldn't cash this check endorsed that way, so I went over to Christine Mellos' desk and I asked her if I could use her phone, and I called Mr. Kahn up and I told him I was unable to cash the check because I had endorsed it, "Texas Liquor Stores by Kay Marcos".

And he said, "Well, could you go up to Texas Liquor and cash it?"

I said, "OK. I have the car here." And I went by car up there, so I went up to Texas Liquor and I cashed it out of the safe.

Q. What did you do with the money?

A. I came back down to the Club Royal, I went to the office and I gave it to Mr. Ursich.

Q. Mr. who? [266]

A. Mr. Ursich, Babe.

Q. Personally, is that right?

A. Yes, that is right.

Q. Do you know what he did with the money?

A. No, I don't.

Q. To what bank did you take the check for cashing? A. U. S. National.

(Testimony of Kay Marcos.)

Q. And do you remember to whom you presented the check for cashing at the U. S. National Bank?

A. Well, I usually always go to the two tellers. It was either Lois or Dorothy, one of the girls I was familiar with.

Q. Lois, do you recognize her in the courtroom?

A. Well, that is one of the girls over there, but I mean it was either one of those two tellers, and I don't know whether it was this particular check I had come to see her with or not.

Q. Miss Marcos, I direct your attention to the latter part of March, 1954, at the Turf Cafe. Do you have a recollection, on or about the 25th of March, 1953, of seeing Mr. A. J. Kahn or Mr. Albert Zimmerman, or both of them in the Turf Cafe?

A. Well, I recall going in there for lunch, I don't know exactly which day it was, and sitting down there and having lunch with Mr. Kahn, and as it goes, there were a [267] number of people in and out of the restaurant all the time, but to Mr. Zimmerman, those statements, I have never heard him make a statement like that, no, sir.

Q. You don't remember such a date, is that right? A. Yes, I do.

Q. Was Mr. Zimmerman there? A. Yes.

Q. And Mr. Kahn? A. That is right.

Q. You say that you don't remember that Mr. Kahn asked Mr. Zimmerman to take Babe Ursich's action during the next few days, or anything in substance and effect like that?

(Testimony of Kay Marcos.)

A. No. I never heard Mr. Kahn say anything like that.

Q. Do you remember about the conversation?

A. Nothing that way.

Q. Ordinary conversation?

A. Just ordinary.

Mr. Danielson: No further direct examination.

Cross-Examination

By Mr. Dunn:

Q. Miss Marcos, you have testified about Government's Exhibit 29. Now, when you first saw Government's Exhibit 29, whom did you say was present, or who did you say was present in the office of Club Royal? [268]

A. Mr. Kahn, Babe and myself.

Q. And was Government's Exhibit 29 then in the office of the Club Royal? A. Yes, it was.

Q. And in whose possession?

A. Babe's, Mr. Ursich's.

Q. And what happened, then, exactly, to this Government's Exhibit 29, after you saw it in Mr. Ursich's possession?

A. He handed it to Mr. Kahn and asked Mr. Kahn if Mr. Kahn could cash it, and Mr. Kahn turned to me and said that, "Would you mind going over to the bank and cashing this check?" And I said, "No. I will go over there." And I walked over to the bank.

Q. Well, did Mr. Ursich give you Government's Exhibit 29?

(Testimony of Kay Marcos.)

A. No. He handed it to Mr. Kahn. He asked Mr. Kahn, "Could you cash this check"? And Mr. Kahn turned then to me and asked me to go over to the bank and cash it.

Q. Now, do you know Mr. Walker Atwell?

A. Yes, I do.

Q. And was his signature on this check at the time that you received it?

A. Yes, it was.

Q. It was endorsed on there. Did you see him in the [269] Club Royal? A. No, sir.

Q. When was this? When did this matter take place? A. Sometime in March.

Q. Of what year?

A. I am not very good on dates. I do not know.

Q. Well, wasn't it March, 1954?

A. Well, if it is on the check, I guess so, but I mean I am not good on remembering dates.

Q. Well, the previous statement you made in answer to Counsel's question in which he asked you whether in March, 1953, you had seen Mr. Zimmerman and Mr. Kahn together, was that the same March that you were referring to as the one in which Government's Exhibit 29 was issued? Was it in the same year?

A. Well, I don't know exactly which of the two years it was, but the date, the reason I remember the date is the date stands out in my mind of March 25.

Q. Well, I am not trying to confuse you. What I am trying to understand is that you testified that

(Testimony of Kay Marcos.)

on the date on which Government's Exhibit 29 bears, that you cashed that and then in the same year this other event took place, where you saw Mr. Zimmerman and Mr. Kahn, the defendant, in the Turf Restaurant, or whatever the name is? Is it the same year? [270]

A. I really don't know. I really don't remember.

Q. But you recall clearly the conversation, do you, between Mr. Zimmerman and Mr. Kahn?

A. I don't think there was any conversation at all. Mr. Kahn and I were having conversation.

Q. And then do I understand your testimony is that you just don't remember hearing the conversation but that Mr. Zimmerman says took place, then?

A. No. I never heard the conversation that Mr. Zimmerman said took place.

Q. You don't deny that such a conversation might have taken place in your presence?

A. Well, if it had taken place in my presence, I would have heard it, but I don't recall hearing that conversation.

Q. You are a good friend of Mr. Kahn's, aren't you, Miss Marcos? A. Yes.

Q. Didn't you, in fact, go to the Sands Hotel with him on March 26 of 1954?

A. Well, I have been to Las Vegas.

Q. My question, Miss Marcos, is didn't you go with Mr. Kahn to the Sands on March 26, 1954?

Mr. Danielson: Well, your Honor——

A. Yes. [271]

(Testimony of Kay Marcos.)

Mr. Danielson: I object to this as not being material or relevant.

The Court: Overruled.

Mr. Dunn: It is to show bias.

Mr. Danielson: And besides, being outside the scope of the direct.

The Court: Overruled, and it is answered.

Q. (By Mr. Dunn): As a matter of fact, since 1953, haven't you lived at the Sharmont with Mr. Kahn, 3066 Sixth Avenue at Apartment 2E?

A. No. I live at home.

Q. And never on any occasion have you stayed there? A. No, sir.

Mr. Dunn: I have no further questions.

Mr. Danielson: I have one question.

Your Honor, if I said, "1953," I am referring to March, 1954. I do not remember that statement. You said that I said 1953. I have no recollection. I am referring to March, 1954.

The Court: You may step down.

Mr. Danielson: Miss Kelly, please.

LOIS V. KELLY

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Give us your full name, please.

A. Lois V. Kelly.

Direct Examination

By Mr. Danielson:

Q. What is your occupation, Miss Kelly?

A. I am a bank teller.

Q. At what bank?

A. United States National.

Q. In San Diego? A. In San Diego.

Q. And were you so employed during the years 1953 and 1954? A. Well, yes, I was.

Q. I hand you Exhibit No. 29 and ask you to examine this check, please. First of all, do you know Kay Marcos, who has just testified? A. Yes.

Q. You know who she is when you see her, at least? A. Yes, I do.

Q. And you knew in 1953 and 1954 at least that she was employed by Texas Liquor Stores, Inc.?

A. Yes.

Q. Do you recall whether on or about March 17 or 18, 1954, you had a business transaction with her at the bank in San Diego?

A. I have had dealings with her. [273]

Q. Do you recall whether at that time you had reason to have to decline to cash a check which she presented for your cashing at the window?

A. Yes.

(Testimony of Lois V. Kelly.)

Q. And is Exhibit 29 that check?

A. I would say so.

Q. And what was the reason why you refused to cash it?

A. She had no authority to sign "Texas Liquor" by her.

Q. Now, Miss Kelly, I hand you Exhibits 1 through 32, inclusive, and ask you to just look at them briefly and examine the little rubber stamp impression that appears on the backs of most of them.

A. The rubber stamp is a cash paid stamp.

Q. You are referring to a diamond-shaped rubber stamp impression? A. Yes.

Q. There at the United States National Bank, what does that stamp mean?

A. It means that any check cashed with it has been cash paid, that money has been given out on it.

Q. And that was true in 1953? A. Yes.

Q. And 1954, also? A. Yes. [274]

Q. And by "cash paid" do you mean that the check was not deposited in the deposit slip?

A. Yes.

Q. But merely exchanged for currency?

A. For currency.

Q. Again directing your attention to Exhibit 29, can you state by examining that check whether it was ever paid through the United States National Bank?

A. Yes. It has our deposit or endorsement stamp on the back, by IBM.

(Testimony of Lois V. Kelly.)

Q. Was that paid in cash or was that a deposit?

A. We took it on deposit on March 18.

Q. From what customer?

A. Through Texas Liquor Stores.

Mr. Danielson: Thank you.

The Witness: Yes.

Mr. Danielson: Just a moment, please.

The Witness: All right.

Q. (By Mr. Danielson): Miss Kelly, I am going to hand you these exhibits, quickly, one by one, and I would like to have you examine them and state whether in your opinion they were exchanged for cash or deposited. A. All right.

Q. Exhibit No. 1.

A. That was cash paid. [275]

Q. Exhibit No. 2.

A. That was cash paid.

Q. Exhibit No. 3. That came through to the bank, in other words, that was not paid by cash at your counter?

A. It was probably a deposit at the Bank of America. That is a Bank of America stamp.

Q. That is not your stamp. Exhibit No. 4?

A. Cash paid.

Q. Exhibit No. 5? A. Cash paid.

Q. Exhibit No. 6? A. Cash paid.

Q. Exhibit No. 7? A. Cash paid.

Q. Exhibit No. 8? A. Cash paid.

Q. Exhibit No. 9? A. That was cash paid.

Q. Exhibit No. 10?

A. This looks like it might have been a deposit.

(Testimony of Lois V. Kelly.)

Q. That is a deposit?

A. Yes. That is a check that went through Hafter's.

Q. Exhibit No. 11?

A. That is the Bank of America. [276]

Q. That is a deposit, then? A. Yes.

Q. Exhibit No. 12?

A. That is a cash—deposit.

Q. A deposit?

A. It has a deposit credit stamp.

Q. Exhibit No. 13? A. Cash paid.

Q. Exhibit No. 14? A. Cash paid.

Q. Exhibit No. 15? A. Cash paid.

Q. Exhibit No. 16?

A. That is a cash paid.

Q. Exhibit No. 17? A. Cash paid.

Q. And Exhibit No. 18?

A. Also a cash paid.

Q. Exhibit No. 19? A. Cash.

Q. Exhibit No. 20? A. It is a cash.

Q. Exhibit No. 21? A. Cash.

Q. Exhibit No. 22? [277] A. Cash.

Q. Exhibit No. 23?

A. That is evidently a deposit.

Q. Exhibit No. 24? A. That is a deposit.

Q. Exhibit No. 25? A. It's a deposit.

Q. Exhibit No. 26? A. It is a cash paid.

Q. Exhibit No. 27? A. Cash paid.

Q. Exhibit No. 28? A. Cash paid.

Q. Exhibit 29? I believe you testified that was a deposit? A. That was the one—yes.

(Testimony of Lois V. Kelly.)

Q. Exhibit No. 30?

A. That is a cash paid.

Q. Exhibit No. 31?

A. It looks like a deposit.

Q. And Exhibit No. 32? A. Cash paid.

Mr. Danielson: No further direct examination. Thank you. [278]

Cross-Examination

By Mr. Dunn:

Q. Is it Mrs. Kelly? A. Miss.

Q. Miss Kelly, I show you again Exhibit 29 and ask you by what means you are identifying that this was a deposit?

A. There is no stamp on it showing that it would be cash paid, and we wouldn't take a check to just "Texas Liquor Stores" signed on it and cash it for a thousand dollars.

Q. So, in your opinion, this check was credited to the account of the Texas Liquor Stores?

A. To the Texas Liquor Stores.

Q. Cash wasn't paid over the counter for it?

A. Not at the bank.

Mr. Dunn: I have no further questions, Miss Kelly. Thank you. That is all.

Mr. Danielson: That is all.

Mr. Carr: May I call Mr. Julius Kahn back to the stand?

Mr. Danielson: May Miss Kay Marcos and Miss Kelly of the United States National Bank be excused?

The Court: Yes, they may. [279]

JULIUS KAHN

recalled as a witness herein on behalf of the defendant, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Carr:

Q. Mr. Kahn, during the lunch hour, I believe you indicated you had made an error with respect to the ownership of the Club Royal. I asked you the question who were the owners in the latter part of 1953 and in the early part of 1954, and I believe you said whom?

A. I said Mr. Albert Bertolino and myself. I was incorrect.

Q. What is correct?

A. The correct owners were myself and Dr. Earl Brody.

Q. And when did that ownership change?

A. It changed in the latter part of 1951 and then Mr. Bertolino came back on in 1955.

Q. So that in '53 and 1954 it was a partnership, you say? A. A partnership.

Q. And owned by what two partners?

A. Dr. Earl Brody and myself.

Mr. Carr: No further questions.

Mr. Dunn: No questions. [280]

Mr. Carr: Mr. Yale Kahn.

YALE KAHN

called as a witness herein on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Will you give us your full name, please?

A. Yale Kahn.

Direct Examination

By Mr. Carr:

Q. Which Mr. Yale Kahn are you?

A. Nephew.

Q. You are the nephew of the defendant A. J. Kahn? A. That is right, sir.

Q. What is your business or occupation?

A. Now?

Q. Yes, now. A. Now, liquor salesman.

Q. And in 1953, the latter part, and the early part of 1954, did you have any connection with the Club Royal at San Diego?

A. Yes, I did. I was working there.

Q. In what connection?

A. I was manager of the Club Royal at the time.

Q. And is that one of a chain of several of those bars? A. At that time, yes. [281]

Q. And I take it that then your managership applied not only to this one but to the others?

A. That is right.

Q. In that particular chain. Now, do you know a man by the name of Ursich? A. I do.

Q. And can you tell me generally about how

(Testimony of Yale Kahn.)

much time would you spend at the Club Royal during the latter part of 1953 and the early part of '54?

A. Well, the majority of my time was spent in the Club Royal. All our work was done in the office there.

Q. Now, did you ever have occasion to cash any checks for Ursich? A. Yes.

Q. The first exhibit I wish to show you, Mr. Kahn, is Exhibit No. 4. I will just put these in front of you and go back to the lectern and call your attention first to Exhibit No. 4. Look on the back. You will see a slip there. It is the Clerk's marking of 4. Do you find it? A. Yes, sir.

Q. Now, look at the face of that check and you will note that it is for $50.00, September 22, and on the back I believe it has "Club Royal Yale Kahn"?

A. No, sir.

Q. Exhibit 4 doesn't have that? [282]

A. Exhibit 4, no, sir.

Mr. Carr: I must be in error. Pardon me.

The Witness: The check is for $400.

Mr. Carr: I guess I am in error about that, your Honor. I don't know how I made that error.

Mr. Danielson: Is it Exhibit 4?

Mr. Carr: Yes.

Q. Now, Exhibit No. 5, will you turn to that one? Is your signature on the back of that one?

A. Yes, sir.

Q. And does it say "Club Royal Yale Kahn"?

A. "Club Royal Yale Kahn".

(Testimony of Yale Kahn.)

Q. Can you tell me from looking at that how that transaction was handled?

A. How do you mean, how it was handled?

Q. Well, the check was cashed or not, and what was done with the cash?

A. Well, the check was cashed.

Q. By whom?

A. Well, I went to the bank with this.

Q. Well, it is Mr. Ursich's check, is that right?

A. That is right, sir.

Q. And who asked you to cash it?

A. Mr. Ursich came in and asked me to cash it.

Q. And you personally went to the bank and cashed it? [283]

A. Yes, myself, I went to the bank and cashed it.

Q. And what did you do with the money?

A. Came back and gave it to Mr. Ursich.

Q. Now, what exhibit is that, Mr. Kahn?

A. No. 5.

Q. Now, the next one is Exhibit No. 7. Do you have that one? A. That is right, sir.

Q. That is for $100, and on the back of that, it is endorsed, "Club Royal Yale Kahn"?

A. That is right, sir.

Q. Do you recollect the transaction, how it was handled, or does it indicate or refresh your recollection as to how it was handled?

A. This check probably comes back to me with the amount; evidently that I went to the bank with this and brought back the cash for Mr. Ursich.

Q. That is your best recollection?

(Testimony of Yale Kahn.)

A. That is right, sir.

Q. Now, as to Exhibit No. 8, will you please turn to that one? Did we give you that one?

A. No. Exhibit 8 I have here.

Q. That is what I thought. A. Yes.

Q. Turning to Exhibit No. 8, on the back, do you [284] find "Club Royal Yale Kahn"?

A. That is right, sir.

Q. That check is in the amount of $620. Do you have any recollection about that check?

A. The check with this amount would stand out in my mind. He did bring this in. I went to the bank and got the money.

Q. Who did? A. Mr. Ursich.

Q. Any other signature on the back of it?

A. My signature.

Q. I see. Do you know whether or n what was done with the cash from that check?

A. No, sir.

Q. I mean, who got it?

A. Mr. Ursich got the money.

Q. By the way, on the occasion when you cashed that check or had it cashed, whichever was the fact, was your father present there that day?

A. Pardon me?

Q. I mean your uncle.

A. No, I don't believe he was.

Q. Well, as a matter of practice——

A. I can't recall.

Q. As a matter of practice, was it customary [285] both of you to be at the club at the same

(Testimony of Yale Kahn.)

time, or were you making the circuit, or what was the situation?

A. No, it wasn't the practice for both of us to be there at the same time.

Q. Now, when you were there, I take it that you did the attending to the cashing of his checks?

A. That is right, sir.

Q. And was that the reason that your signature appears here? A. That is right.

Q. And when you were away, I guess generally it was someone else's, isn't that right?

A. Depending on who it was, and the bartenders took it upon themselves with their own responsibility.

Q. All right. Now, then, I will put before you some other exhibits. I think we have finished with all of those.

There are 12, 13, and 26. Will you look at No. 12 first, please? That has on the back of it the "Club Royal," stamp, is that right?

A. That is right.

Q. And "Yale Kahn". Can you tell from looking at that check how you happened to put your endorsement on it?

A. Yes. My endorsement is on there when we make up the bank. If it was on a weekend, I can't tell by [286] the date, if it was on a weekend or not on a weekend. This check had my signature for the simple reason I had more checks than I had currency, and I needed currency to put back in my

(Testimony of Yale Kahn.)

petty cash box and all checks on deposit, I would sign like this and get currency for it.

Q. And what did you do with the currency?

A. Replaced it in the safe.

Q. In other words, that "Club Royal" stamp is *the thing that indicates that to* you, is that right?

A. That is right, sir.

Q. The next one is Exhibit No. 13. Will you look at that, please? That is for $200. On the back of that check there is not a stamp, but it says "Club Royal Yale Kahn"? A. That is right.

Q. Is that correct? A. That is correct.

Q. Now, from observing that endorsement, can you tell me, does it refresh your recollection as to what occurred with respect to that check?

A. Well, this check was taken in by me and cashed personally, at the bank.

Q. And what did you do with the cash?

A. The money I brought back and gave to Mr. Ursich.

Q. Do you have Exhibit No. 16 in front of you? No, no. You don't.

The Witness: These are Nos. 12, 13, and 26.

Q. (By Mr. Carr): What is the next one you have, No. 26? A. No. 26.

Q. Will you look at that one, please? That is the check for $100, and I note on that check the name appears, "Yale Kahn" and no "Club Royal". Can you explain why? Or what happened to that check?

A. Evidently the same as the others. Sometimes I would have the habit of putting "Club Royal" on

(Testimony of Yale Kahn.)

it, and sometimes I would take it right to the bank and just put "Yale Kahn" on.

Q. And what was the reason for that?

A. No particular reason, no.

Q. Was it an oversight, you mean?

A. Possibly, yes.

Mr. Carr: May I have just a moment.

No further questions.

Cross-Examination

By Mr. Dunn:

Q. Mr. Kahn, referring to this last exhibit which you testified to, No. 26, the check for $100, as I understood your testimony, you said that evidently you did the same as the others. You do not actually recall, do you, [288] how you handled this?

A. Well, without the "Club Royal" stamp I have taken the checks to the bank myself and got cash for it.

Q. Well, you individually recall this Exhibit No. 26, or are you testifying as to a practice which you maintained in the business?

A. I do not follow that question?

Mr. Dunn: May I have the question read?

(Question read by Reporter.)

Q. (By Mr. Dunn): Well, I am asking, then, to clarify it for you, whether you recall specifically Exhibit No. 26, and recall what you did with it as an individual check?

A. What I did with the money?

(Testimony of Yale Kahn.)

Q. No. What you did with this check.

A. I took it to the bank, I endorsed it, got the money, and brought it back and gave it to Mr. Ursich.

Q. You remember that specifically?

A. Yes, all except there was one check——

Q. No. My question is this, aren't you actually testifying as to the practice which you maintained rather than to this individual item?

A. Yes.

Q. You don't recall this item specifically, do you? A. Not the specific signature, no. [289]

Q. And as a matter of fact, don't you handle a large volume of checks? A. I do.

Q. At the Club Royal? A. I do.

Q. Literally hundreds, don't you?

A. At that time there were quite a few on occasions.

Q. So you don't actually remember these transactions? A. Yes, I do.

Q. You remember each one individually?

A. The reason I say I do is because I myself have taken those checks and brought back cash for them. Otherwise, I don't believe I would.

Q. As a matter of fact, isn't it true that sometimes the checks would pile up and when you came in, you would endorse them and take them over and get cash? A. No, sir.

Q. Never did you do it in that way?

A. Not all at one time, no, sir.

Q. You went out individually to the bank and

(Testimony of Yale Kahn.)

got the cash? A. Yes.

Q. You did maintain currency in the safe?

A. Yes.

Q. As a matter of fact, you maintained very large [290] amounts in it from time to time?

A. At times.

Q. So a check of $100 wouldn't be a particular hardship on the business, in the normal course of events?

A. At times when he brought those checks in, I hadn't added up my money to take yet, and when I was going to the bank, I would take that with me and bring back the cash. That has happened on numerous occasions.

Mr. Dunn: I haven't any further questions.

Mr. Carr: That is all.

Examination

By the Court:

Q. What is your position at the Club Royal?

A. Manager, manager when Mr. Kahn wasn't there.

Q. And I understand it to be your testimony that Mr. Ursich came in to the Club Royal. How far was it to the bank from the Club Royal?

A. Well, we banked at the U. S. National Bank right around the corner. Mr. Ursich would come in and ask me a favor and I would do it for him.

Q. How far around the corner?

A. Two blocks.

Q. Of course, you observed that that was his

(Testimony of Yale Kahn.)

bank, too, as well as your bank?

A. Yes. [291]

Q. The checks were on that bank.

Now, it is my understanding that he came into your establishment, and he asked you to cash checks for him, and you would take his check, go up to the bank and cash it and bring it back and give him the cash? A. *That is right, sir.*

Q. Why didn't he go and get his own money?

A. I never asked that. He would come in——

The Court: It was his own bank.

A. Evidently he parked his car across the street, at the parking lot, and I presume he would come in before he would go to the bank. He always parked his car across the street.

Q. (By the Court): Was he such an important personage around there that everybody would be his flunky and go out to cash his checks?

A. Well, I considered the man a customer. If I could do him a favor, anything in my power, I would do it for him. He was not asking too much.

Q. Then, was it your practice if anyone came in there and wanted to cash a check for $600, you would say, "Give it to me and I will go up to the bank and cash it for you?"

A. No, sir, not if I didn't know the gentleman.

Q. But anyone you knew, you would cash his check, [292] go up to the bank and cash it for him?

A. Not a very large amount.

Q. Why did you for Ursich?

A. I knew Ursich. I knew he was a fisherman. I know he was reputable and that he was very good

(Testimony of Yale Kahn.)

Q. Did you ever tell Ursich that you were the manager, "Go up and cash the check yourself"?

A. No, I never questioned him. He said usually, "Will you cash this check when you go to the bank?" I said I would be glad to take it and cash it and take it when I go.

Mr. Carr: May I ask a question or two?

The Court: Yes.

Redirect Examination

By Mr. Carr:

Q. Mr. Ursich was considered a good customer of your place? A. Yes, sir.

Q. He spent a good deal of money there?

A. Yes.

Q. Have you any idea how much of a cassh fund was kept on hand in these various places like the Club Royal?

A. I would say we kept ready banks at alll times in excess of six to eight hundred dollars, possibly better at times. [293]

Q. And could you estimate as to howw many checks a week in money you would cash for the places, the total, that you managed?

A. No, I wouldn't.

Q. Have you got some estimate for thatt period of time, would you make an estimate?

A. I wouldn't know how far off I would be.

Q. Well, to the best of your ability, give me an estimate.

(Testimony of Yale Kahn.)

A. On week ends, I would possibly say, oh, in one place, six to eight hundred dollars.

Q. Well, was there a fund, some kind of a cash fund?

A. We kept a small petty cash fund for each.

Q. I mean as a whole group?

A. Not there, no, sir.

Q. Where was that kept?

A. Each place had their own.

Q. And was that made up from one bank?

A. No, sir. Each one had its own individual petty cash fund.

Q. What did the Texas Liquor Stores have to do with it?

A. The Texas Liquor Stores?

Q. Yes. A. At that time, nothing. [294]

Q. So each place had a bank of six to eight hundred dollars, is that right? A. Yes.

Q. And for example, suppose sailors or marines or different people came in there to cash checks, did you cash checks for them? A. Yes.

Q. And would you do and follow the same procedure, go to the bank and cash their checks, if you were short, or what was the situation?

A. Well, the sailors and marines would come in and the banks would be closed. They would come in the latter part of the afternoon or evening.

Q. When was the biggest check cashing time as a rule?

A. The bigest days would be the last day of the month and the 15th of the month.

(Testimony of Yale Kahn.)

Q. And did you make any particular arrangements for weekends?

A. Well, just the cash that was taken in.

Q. The Court asked you about why you were doing this for Mr. Ursich. A. As a favor.

Q. And was it because he was a good customer?

A. That is right, sir.

Q. Did you ever take a bet from him? [295]

A. No, sir.

Q. Were you ever bookmaking yourself?

A. No, sir.

Q. Did you ever see him give your father a bet?

A. No, sir.

Mr. Carr: I keep saying your father; I mean your uncle.

That is all.

Mr. Dunn: I have two or three more questions, your Honor.

Recross-Examination

By Mr. Dunn:

Q. When was it that your employment with Club Royal was completed?

A. In May of '55.

Q. So you were there, then, at the time that the safe was robbed, Mr. Percy Welch was bound and gagged, as I understand it, and it was reported that over $10,000 was missing from the safe, is that correct? A. Yes.

Mr. Carr: Well, I—it has been answered, now.

Mr. Dunn: I have no further questions.

(Testimony of Yale Kahn.)

Mr. Carr: And I move to strike the last on the ground that it has no bearing on any issue in this case whatsoever. [296]

The Court: It may go out.

Mr. Dunn: Well, your Honor, the "$10,000" is just to establish the amount in the safe at the time, in view of his testimony.

The Court: I understood your question was, "Was that in May?" It wouldn't make any difference.

Mr. Dunn: No, I don't know the exact date; I just said "at the time".

The Court: Well, at any rate, whether it was in May or at another time, the fact that there may have been $10,000 in it at a certain time or $100,000 wouldn't prove anything in this case.

You may step down.

Mr. Dunn: It is just going to the credibility of the witness, as far as these checks are concerned, your Honor.

The Court: Well, it doesn't go to his credibility. The fact that there was a robbery there on an occasion when there was $10,000 there doesn't mean they always had the $10,000.

Mr. Dunn: I understand that.

Mr. Carr: Mr. Yale Kahn, the son.

YALE KAHN

called as a witness herein on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Will you give us your full name, please? [297]

A. Yale Kahn.

Direct Examination

By Mr. Carr:

Q. You are Mr. Yale Kahn, the son of the defendant, A. J. Kahn? A. Yes, sir.

Q. And do you reside in San Diego?

A. Yes; I do.

Q. Were you residing there in 1954?

A. Yes.

Q. Along in the spring of 1954?

A. Yes, sir.

Q. I want to direct your attention to what has been referred to here as an alleged bet on a horse or an entry including Imbros. Do you know Babe Ursich? A. Yes; I do.

Q. And on about March 27, do you remember what day of the week that was? Have you refreshed your recollection? A. Saturday.

Q. Did you see a Mr. Zimmerman or a Mr. Ursich on that day? A. Yes, sir.

Q. And how did you happen to see them?

A. I saw them at the Club Royal. [298]

Q. And you were not in any way connected with the Club Royal at that time? A. No, sir.

(Testimony of Yale Kahn.)

Q. And did you have a conversation with Ursich about the possibility of a bet of $1,000 on the entry?

A. Yes, sir.

Q. On the horse, rather, Imbros?

A. Yes; I did.

Q. Did he say the entry, or the horse?

A. A horse.

Q. And who was present at that time?

A. Mr. Al Zimmerman.

Q. And will you relate the conversation at that time, to the best of your recollection?

A. Yes, sir. I left my office.

Q. Just relate the conversation.

A. Just the conversation, sir?

Q. You are already there, so give us the conversation. A. All right.

As I walked in the door, Babe said, "Yale, I would like to bet $1,000 on a horse, Imbros."

I said, "What do you want from me?"

He said, "Would you do me a favor and call your dad. He is in Las Vegas and he can possibly bet it for me in Las Vegas." [299]

So I says, "All right."

And I got on the phone and I contacted my dad at the Sands Hotel. I got him on the phone. I said, "Dad, Babe Ursich is here and wants to bet $1,000 on a horse called Imbros in the feature race of the day."

He said, "Well, I think I can probably get the bet up here in Las Vegas, but I haven't got the money. I haven't got the thousand dollars on me." He said,

(Testimony of Yale Kahn.)

"Ask Babe if he can send the money up or wire me $1,000 or get it to Las Vegas."

I said, "Hold on a moment."

I turned around and I said to Babe, "Dad says he can possibly get the bet if you can get the money sent up there to him right away."

Babe said, "I haven't got the money. The banks are closed and I can't do anything about it."

I said, "I don't know what to do. You talk to dad."

I turned the phone over to Babe Ursich. On his end of the wire I heard him say, "Well, I can't get a check cashed. The banks are closed and I can't get a check cashed," and he reiterated that, I think, two or three times, then he hung up, and then I left the office.

Q. Did Babe give you a check for $500 that day?

A. No, sir.

Q. Did you make any agreement with him that you would [300] participate in a bet on this horse, Imbros? A. No, sir.

Q. And did you receive any cash or anything of value of any kind? A. No, sir.

Q. In connection with that alleged transaction?

A. No, sir.

Q. Did he ever ask you to take a part of a bet on Imbros? A. No, sir.

Q. Did you see anybody give anybody a check for $2300 at that time? A. No, sir.

Mr. Carr: No further questions.

(Testimony of Yale Kahn.)

Cross-Examination

By Mr. Dunn:

Q. Do you recall what time it was when this telephone call was placed, Mr. Kahn?

A. Mr. Dunn, I think it was prior to 2:00 o'clock. I wouldn't—I am quite sure it was prior to 2:00 o'clock in the afternoon.

Q. Well, as a matter of fact didn't you first attempt to call your father at the Flamingo Hotel in Las Vegas?

A. I tried to locate my dad in Las Vegas. [301] Now, I think I knew he was staying at the Sands; in fact, I am quite sure he was. When this came up, I don't think I tried to get him at the Flamingo. Possibly I might have, but in the back of my mind, I know he stays at the Sands on all occasions in Las Vegas, and I think I located him directly at the Sands.

Q. You don't recall, then, that two calls were placed, one at one time of the day, and one about half an hour later, and that that second call is the time when your father was reached?

A. By myself; no.

Q. Well, I am not asking about calls by yourself, then. I am asking about the calls.

A. You mean I myself made the calls, sir?

Q. Well, I don't know.

A. Are you asking me if I made two calls half an hour apart?

(Testimony of Yale Kahn.)

Q. I am asking you whether you know two calls were placed?

A. No; I don't know, sir, half an hour apart; no.

Q. But you do recall that your father was reached at the Sands Hotel?

A. I reached him myself.

Q. And who was present at that time?

A. I talked to him. [302]

Q. Who else, do you remember, besides yourself?

A. Myself and Babe Ursich.

Q. What about Mr. Zimmerman?

A. Mr. Zimmerman was present in the room. To my recollection he did not talk to my dad.

Q. Now, this race was at what track, do you recall? A. No, sir; I don't.

Q. This was March of 1954, wasn't it?

A. Yes, sir.

Q. And the horse, at least one of the horses, was Imbros?

A. Imbros is the horse I know that he discussed.

Q. And wasn't that the feature race at Santa Anita on that day or Hollywood Park?

A. I don't know.

Q. One of the California tracks?

A. I am sure it was that late in the afternoon.

Q. How late in the afternoon do you think it was?

A. If it was 2:00 o'clock, I am sure it was a California track, and which one, I don't know.

Q. From what telephone did you place that call?

(Testimony of Yale Kahn.)

A. Belmont 3-1579 or Franklin 1579. I am not sure when the change was made.

Q. That was the same telephone, wasn't it?

A. Yes. [303]

Q. Franklin 1579 was the same number as Belmont 3-1579 at one time? A. That is right.

Q. And did you on any other occasion during that day telephone Las Vegas to that number?

A. Did I?

Q. Yes, sir. A. No, sir.

Q. Do you know of any other call that anyone made during that day? A. No, sir.

Q. On that phone? A. No, sir.

Q. You were asked whether or not Babe gave you a check, but as a matter of fact, you did receive a $500 check from Mr. Zimmerman that was signed by Mr. Hubert Ursich? A. No, sir.

Q. You did not receive one on that day?

A. No, sir.

Mr. Dunn: I have no further questions.

Mr. Carr: Step down, please.

The Court: I think we will take a five-minute recess.

(Recess.)

The Court: You may proceed. [304]

Mr. Carr: Mr. Kahn.

A. J. KAHN

the defendant herein, called as a witness on his own behalf, being first duly sworn, testified as follows:

The Clerk: Give us your full name?

A. Abe Kahn:

The Clerk: Your middle initial is J?

A. J.

Direct Examination

By Mr. Carr:

Q. You are Mr. A. J. Kahn? A. Yes.

Q. The defendant in this case? A. Yes.

Q. Mr. Kahn, how old a man are you?

A. 64.

Q. And how long have you lived in San Diego?

A. About 33 or 34 years.

Q. Now, with respect to the latter part of the year 1953 and 1954, were you occupied at that time?

A. Yes, sir.

Q. In any business? A. Yes, sir.

Q. What was your job or what were you [305] doing?

A. I was manager of about five or six clubs, family enterprises.

Q. And those were more or less a chain of bars there in San Diego, is that what you would refer to them as?

A. Yes, sir, restaurants and bars.

Q. In this Club Royal, did you have any ownership during the times charged in this Information? Do you know what those are? A. Yes, sir.

Q. In 1953 and '54, did you have any ownership?

A. No, sir.

(Testimony of A. J. Kahn.)

Q. And just generally what were your duties?

A. Well, I primarily do all the buying for those clubs, commissaries, and so forth.

Q. You say clubs. You mean all six of the clubs?

A. Yes.

Q. Were there six? A. Yes.

Q. And what other duties, generally?

A. I would do most of the buying, I would hire all of the help, most of the help, anyway. I would act more or less in a supervisory capacity of all of them.

Q. Did you have any arrangement there for cashing checks during that period of time? [306]

A. Yes, sir.

Q. By the way, did you know a fellow by the name of Ursich? A. Real well, yes, sir.

Q. Did you ever at any time take a horse race bet yourself, personally? A. No, sir.

Q. From him? A. No, sir.

Q. Did you ever cash any checks for him or have them cashed? A. Yes, I did.

Q. What was your procedure, Mr. Kahn, with respect to cashing checks for Mr. Ursich?

A. We had a total cash, petty cash in each club ranging from three to five thousand dollars. Out of that three or five thousand dollars, we had several registers in each club, and we would have to make two banks for the bartenders out of each, out of each petty cash, and they would consist of $201.00 to each register. If there were five registers, there

(Testimony of A. J. Kahn.)

was $1005, $1005, that is right, and the rest of it would be in the safe. And we had arrangements that if a man came in with a check and he was identified, especially payroll checks and Government [307] checks, that we would cash them.

Q. On the week ends, did you do a substantial check cashing business?

A. A little more than usual, yes, sir.

Q. Now, this office, where was this office located with respect to the open barroom?

A. It is right about the center of the building, a little bit farther to the west between two rooms. The Club Royal is using two rooms. The first room is a club room and then we call it the Royal Room. Then, right about the center or a little farther down, there is an open room. It isn't exactly an office. It is a room where we make up all the banks and whatever work we had to do, and we had a cabinet of whiskey in that same room.

Q. Was there a safe? A. Yes, sir.

Q. Was there a safe room or what was that?

A. It was a little closet on one corner of the room with a door and the safe was inside of that.

Q. Was there a door to this office?

A. Yes, sir.

Q. Was that usually opened or closed or what?

A. Most of the time it was open.

Q. And state whether or not people generally were [308] sitting around and using that office?

A. Yes, everybody used it.

(Testimony of A. J. Kahn.)

Q. Did you have any bookmaking equipment or any markers or anything of that kind——

A. No, sir.

Q. ——in that office at all?

A. No, never.

Q. Did you keep Racing Forms or sheets or things of that kind?

A. I wouldn't, no, sir, but at times some of the boys did come in, one or two of them, and then, of course, it didn't belong to me at no time, I would never buy one.

Q. Did any bookmakers hang around the place?

A. Yes, sir.

Q. At the Club Royal?

A. Yes, sir, quite a bit.

Q. And did they come in usually about what time of the day?

A. Well, they would come in at all times of the day. They were all good customers. There was a card room next door. They would congregate all the way from 20 to 30 or 40 people at times. They were all pretty good customers. They would all come in.

Q. Was Ursich a good customer of Club [309] Royal? A. Yes, a very good customer.

Q. In what way?

A. Any time he was in town from fishing, he would come in and spend considerable money. He would buy drinks himself, he would insist all the time to buy me a drink, buy everybody around drinks. He was considered a very good customer.

Q. And did you observe him, Mr. Ursich, mak-

(Testimony of A. J. Kahn.)

ing bets with bookmakers during this period of time? A. I did, sir.

Q. Now, were you asked by Mr. Ursich at any time to cash checks? A. Yes, sir.

Q. And did he ever give you a check for a bet on a horse? A. No, sir.

Q. You personally?

A. He never did, no, sir.

Q. When he wanted to get a check cashed and you were there, what procedure did you follow, generally speaking?

A. I would OK it. Sometimes I would cash it and put it in our cash. Sometimes. Now, we have had some experience with some of his checks that were turned down [310] at the bank, and I left an order at the Club Royal that when Mr. Ursich comes in to cash a check, particularly a big check, to go to the bank and cash it and not leave it in the Club.

Q. Was that the reason, then, that this accommodation was usually made by going, sending somebody to the bank to cash the check?

A. That is right, sir.

Q. Had you ever had any previous checks turned down? A. Yes, sir.

Q. Of his? A. Yes, sir.

Q. Now, Mr. Kahn, I will put in front of you certain exhibits, in their order, Nos. 1, 2, 3, and 16, and I will ask you to refer to the first one. It is No. 1. That is a check for $50,00, and on the back it is endorsed "A J Kahn A E Anderson."

(Testimony of A. J. Kahn.)

A. Yes.

Q. Can you tell me what that indicates, please?

A. We would cash most of the checks, we would cash most of the checks, that is, any amount we would need, cash them out of the safe. The safe was locked with a combination. When Mr. Ursich, or anybody, for that matter, would give a check and I was in the Club myself, instead of going to the safe, I would put my name on it and whoever was around, either [311] the cook, Percy Welch, or Yale Kahn, I would hand it to them and say, "Go and get this check cashed and hand him the money."

Q. Now, are you testifying to this particular check or are you just remembering the usual procedure?

A. No, I don't remember this particular check, no, sir.

Q. Will you turn next to Exhibit No. 2. You have it there, don't you? A. Yes.

Q. That is the same situation, it has the endorsement, "A J Kahn A E Anderson."

A. That is correct.

Q. Did you receive that yourself, personally, that cash?

A. No, I never took any of that money. After I endorsed the check, I would hand it to somebody, whoever was there, and said, "Go and get this check cashed for Mr. Ursich."

Q. Did I give you Exhibit 3? A. 2.

Q. What is the next one you have?

A. This is 3, yes, sir.

(Testimony of A. J. Kahn.)

Q. Now, referring to Exhibit No. 3, you will find on that one it says on the back——

A. "OK." [312]

Q. ——It is for $300. "OK A. J. Kahn, A. E. Anderson", and then there is something below that, isn't there, "Surf Club"? A. Yes.

Q. What does that indicate to you, can you tell me?

A. We didn't cash this check through our Club. We evidently OK'd it and the check didn't go through our bank or through the U. S. National Bank, and it was cashed somewhere else.

Q. Where did it go?

A. I don't know anything about the Surf Club. I don't know know where they are at. Or I do not know who they are.

Q. Do you know what happened or why it was cashed after you put your name on it and your OK?

A. To the best of my knowledge——

Q. To the best of your ability?

A. To the best of my knowledge, I know that I OK'd the check "OK A. J. Kahn," and Anderson went over there to cash it, and evidently there wasn't any money and he brought it back and they cashed the check somewhere else, cashed the check at the Surf Club.

Mr. Dunn: I move to strike the testimony after "evidently," as to what it was.

The Court: It may go out. [313]

Mr. Carr: The check shows itself it was cashed somewhere else.

(Testimony of A. J. Kahn.)

Mr. Dunn: It doesn't show who did it.

The Witness: It wasn't cashed through our bank account.

Q. (By Mr. Carr): The next exhibit, Mr. Kahn? A. No. 16.

Q. Which you have in front of you. By the way, I skipped over No. 4. No.

Mr. Danielson: He has No. 16.

Q. (By Mr. Carr): Now, the next.

Before I get to that No. 16, I will bring you up some more here. I will bring you up No. 4 and I will add Nos. 18 and 19 and put them in the order. Now, if you will pick up Exhibit No. 4, please.

A. Yes, sir.

Q. Exhibit No. 4, is a check for $50.00.

A. Exhibit No. 4, you say?

Q. I must be in error about that. Pardon me, your Honor, but I must have handed him the wrong exhibit. We have on our list——

Mr. Danielson: The error is on the list. The exhibit is correct. It should be $400.

Mr. Carr: I am sorry, but I have the wrong number on my list.

Q. I show you another exhibit, Exhibit No. 4, and [314] ask you to look on the back, and you will find there, I believe it is for $400 and there is "A. J. Kahn" only on that one, isn't that right?

A. That is right.

Q. And that check, I believe, has the square diamond on it, too, I am not sure. Do you know what I mean by the "Cash" diamond?

(Testimony of A. J. Kahn.)

A. Yes. There is one here.

Q. Do you know what happened to that check?

A. I can tell you to the best of my knowledge. I don't particularly remember any particular check, because I handle a lot of them and a lot of business in one particular day. But, what I used to do, when we would get several checks—this check, evidently there is no question in my mind but what I cashed it, because my name is on there and I cashed the check for him through our channels. I might go ahead and cash those checks of $1000 or $1500, I would have my name on there and go down to the bank and get the money and put it back in the safe.

Q. You think that is probably what happened on one of those?

A. There is no question about it.

Q. I mean on this one. A. Yes, sir.

Q. Will you state whether or not that check was given [315] to you for the purpose of a horse race bet?

A. There were no checks given to me for any horse race bets at any time.

Q. I am only asking you, was that check or was it not? A. No, sir.

Q. What is the next exhibit you have?

A. No. 16.

Q. No. 16, for $100. It has a "Club Royal" stamp on it stricken out and the word "cash" and it has "A. J. Kahn, A. E. Anderson" on it.

A. I will explain that very thoroughly. When we

(Testimony of A. J. Kahn.)

cash a check, at some time or another, we put our "Club Royal" stamp on it. Then maybe we want to go to the bank and cash them, so we would scratch the stamp out, just like we do up to the present day, we just scratch the stamp out, I put my name on it and either send somebody or go myself. In this particular instance, I sent Andy Anderson to cash the check, or checks, for that matter.

Q. And what was done with the money, so far as you know?

A. This one went into our money, our safe.

Q. And for whom did you cash the check?

A. Urdich.

Q. Well, I mean, did he get $100 for that check?

A. Oh, yes; no question about it. [316]

Q. You are sure of that? A. Positive.

Q. And what is the next check, the next exhibit?

A. No. 18.

Q. All right, sir, that is a check for $200, and it has on the back of it "A. J. Kahn"?

A. Just exactly the same, the same transaction.

Q. And there is no marking?

A. Just "A. J. Kahn." A lot of times, I would, as I say, at 11:00 or 12:00 or 1:00 o'clock in the afternoon, come in and I would make up the previous day's receipts. It was done either by me or by Yale Kahn. It was done by either one of us, and I was sitting there making up the money, the man would come in and say, "Abe, would you mind cashing this," a $200 check for him.

I would say, "Yes, sir," cashing the check and

(Testimony of A. J. Kahn.)

giving him the $200. This I would do in my case. Later on, in that day, if we needed the money, we would go down and get the money at the bank and replenish the safe.

Q. Do you recall when was about the first time you began to get concerned, if you did, about some of his checks not clearing?

A. Well, put it this way, Ursich was a real good friend of mine.

Q. Who was? [317] A. Ursich.

Q. Ursich?

A. Are you asking me about Ursich?

Q. Yes; that is right.

A. He was a pretty good friend of mine. He was a pretty good scout, and he was a good spender, and I knew his family, he had a very fine wife and some children, and I warned him about it, I said, "Ursich, you are just a big sap for your gambling and they are making a big sucker out of you, and they are taking that money that you are spending for those bets. You haven't got it to pay off your home."

He said, "I know what I am doing. Never mind."

I said, "You know what you are doing? You are past three times 21."

I got a little leery about his spending so much money and I left orders at the Club that whenever he wanted to cash a check, to cash it for him and go down, then, to the bank and get the money.

Q. Mr. Ursich testified here that you pulled a gun on him, I believe he said in the office at the Club Royal.

(Testimony of A. J. Kahn.)

A. I have heard it, to my very much amazement.

Q. Well, did you do such a thing?

A. I am 64 years old. I have never held a gun in my hand in my entire life. I have never owned a gun. [318] I never held a gun in my hand.

Q. You mean any kind of a gun?

A. Any kind of gun.

Q. Pistol, shotgun, revolver?

A. No gun of any kind, at any time in my entire life.

Q. So then, I take it you deny that you ever at any time pulled a gun on Mr. Ursich?

A. Certainly.

Q. During this period, 1953, the latter part of 1953 and the early part of 1954, were you engaged in bookmaking?

A. No. I never was bookmaking in my life.

Q. Were any of these checks that are exhibits in this record which Mr. Ursich testified he gave to you for horse racing bets given to you for that purpose?

A. No, sir.

Q. Did you ever receive any money from Mr. Ursich yourself or any remuneration of any kind in connection with any horse racing bet?

A. No, sir.

Q. Now, with respect to this Las Vegas transaction, when did you go to Las Vegas?

A. Friday afternoon.

Q. And that was in March of 1954; is that correct? A. Yes, sir.

Q. And did you receive a telephone call from

(Testimony of A. J. Kahn.)

Yale [319] Kahn at some time? A. Yes, sir.

Q. Do you remember when it was?

A. It was some time in the afternoon I got the page while I was sitting at the pool.

Q. What day was it, Friday, Saturday?

A. Saturday, Saturday afternoon.

Q. And what did Yale have to say to you?

A. Yale told me about Babe wanted to make a $1,000 bet, and he said, "He wants to know whether" I could make the bet for him in Las Vegas.

I said, "$1,000?" I was quite amazed. "A $1,000 bet." I said, "Has he got the $1,000?"

He says, "Well, let me ask him."

He talked to him a little bit and he says, "No; he hasn't got the money. It is Saturday afternoon. He hasn't got the money. He will give you a check."

I said, "What can I do with the check? Where could I bet the $1,000 with a check? Is he at San Diego? I haven't got the $1,000 with me."

He said, "Here, I will let you talk to Babe."

And Babe came on the phone.

Q. Did you talk to him? A. Yes.

Q. What conversation ensued? [320]

A. I told him the very identical thing that I told Yale.

Q. Was there an entry mentioned or a horse?

A. He mentioned about a horse. I don't know whether he called the horse or not.

Q. What was the name of the horse, which you finally learned, what was his name?

A. Imbros.

(Testimony of A. J. Kahn.)

Q. Then, did you check up to see what happened with Imbros at a later time? A. Yes; I did.

Q. What happened?

A. Later in the evening I went down. There was no bet made. Later I got interested. I heard about Imbros. About a hundred, 150 feet away from the Sands Hotel, there is a book there.

Q. You mean one of the local books there?

A. One of the betting books. I walked down there just for curiosity to find out what that horse done and I found out that Imbros was scratched and there was another horse that ran with him that won.

Q. When Ursich talked to you, did you know that it was an entry or was it just——

A. I didn't know anything of the kind.

Q. Now, did you ever learn that—did you [321] ever receive a check for $2,300? A. No, sir.

Q. From Ursich or from anyone else with Ursich's name on it? A. No, sir; I didn't.

Q. Did you ever find such a check in your desk anywhere?

A. I never did. My desk is wide open to the public. It is open. There is no lock on it. People come in there. Anybody that would put in there a check would be foolish, in the first place.

Q. Did you ever see such a check?

A. No, sir.

Q. Did you ever see a check in the amount of $500 made out to Yale Kahn in connection with this so-called Imbros race?

(Testimony of A. J. Kahn.)

A. Never seen it; no, sir.

Q. And to your knowledge, did you ever receive any money of any kind on an Imbros race from Ursich? A. No, sir.

Q. Did Yale ever tell you that he had received any money?

A. I don't think Yale ever said anything to me about it; no, I don't remember.

Q. Now, Mr. Kahn, when was the first time [322] you saw Mr. Ursich after this, after you came back from Las Vegas? A. The following Monday.

Q. From Las Vegas?

A. The following Monday, about noon, something like that, in the afternoon, 12:00 or 1:00 o'clock, something like that.

Q. And did he come to see you? A. Yes.

Q. Where did he find you?

A. In the office.

Q. Did he bring anyone with him or did he come alone? A. He came alone.

Q. And did you have a conversation then?

A. Yes.

Q. What did Mr. Ursich say to you?

A. He wanted to tell me about this bet, about this supposed bet that he had made with Yale.

Q. Did he say that he had made it with Yale, or with you?

A. With Yale, the supposed bet that he had made with Yale, and he was telling me about it, and he said he went down to see Yale Saturday evening, and Yale told him that he didn't have no bet with

(Testimony of A. J. Kahn.)

him, he doesn't owe him any money and he ain't going to get any money. [323]

Q. Then what was the conversation as you remember it?

A. He just started talking about it.

Q. Just give, to the best of your recollection, the substance of the conversation.

A. Then he just talked about this horse that won and that once he won a big bet and then he couldn't get paid off.

Q. Was he claiming any particular money?

A. I don't remember the amount particularly, but I think it was something like eight or ten thousand dollars.

I said to him, "Look, Babe, I was awfully sorry, if you had sent me the money, I might have gotten on it, but" I said, "we could not have gotten the money on it, anyway, because the horse was scratched."

He said, "I am going to get my money. I never got it from Yale."

I said, "What have I got to do with it? I told you you couldn't have the bet unless you wired the money."

He got a little bit snotty. He said, "I am going to get the money some way or other."

I said, "Go ahead, try, it is all right with me."

Q. When did you next have a conversation with Ursich about it? Did he come back to see you about it?

A. He never did up to this day.

(Testimony of A. J. Kahn.)

Q. He never came back again. And where did this [324] conversation occur, by the way?

A. Right in the back room.

Q. Was the door open or closed?

A. I am not quite sure. It might have been open. It might have been closed. I don't recollect. The door was open at all times.

Q. Now, with respect to bookmakers, and I take it that there were bookmakers in the Club Royal from time to time during this period in question?

A. Yes, there were quite a few of them around the corner.

Q. I am talking about in the Club Royal where you worked?

A. Yes, there were quite a few of them that used to come in there every day.

Q. Did you ever see Babe making bets with them? A. Lots of them, any number of them.

Q. Were any of these checks, do you think, or do you remember, cashed for the purpose of permitting him to make bets with those bookmakers?

A. I would assume that he did. I don't know what he did with the money after he cashed it.

Q. And I take it from what you have said, you did see him make bets?

A. Yes, positively [325]

Q. Did you ever at any time attempt to run the bookmakers out of the place?

A. We did at some times, but we were very

(Testimony of A. J. Kahn.)

unsuccessful and, of course, they were very good customers, and we just got to tolerate them a lot.

Q. You never made any serious efforts to get rid of them?

A. Well, not very serious, no.

Q. When Babe was sitting there having a few drinks, was he fairly liberal about buying drinks for other people?

A. Yes, very liberal. He knew a lot of people. He had a lot of friends. We had a lot of fishermen in that club there and all the fishermen would buy each other drinks, and very liberal.

Q. Do you know what a "mark" is?

A. Yes. You bet I do.

Q. What is a "mark"?

A. An easy mark, just easy.

Q. Was he called a "mark" around the place?

A. Very much so, and I told him so to his face, not once but at different times.

Q. And when he was sitting around drinking, did you notice whether or not he had a tendency to increase his betting?

A. I did not particularly, no; I never paid no attention [326] to how much he was betting, but I know he was betting all the time. He wasn't betting with any particular one man, but he was betting with three or four, five of them.

Mr. Carr: May I have just one moment, please. I believe that is all at this time, your Honor.

(Testimony of A. J. Kahn.)

Cross-Examination

By Mr. Dunn:

Q. Have you ever made a bet at all in your life?

A. Sir?

Q. Have you ever made a bet at all in your life?

A. Yes.

Q. Have you ever booked a bet? A. No, sir.

Q. You are not a gambling man, I take it?

A. Oh, yes, I gamble, I bet on sports, I bet on ball games. I bet once in a while on a horse, but not too many horses, though. When I go to the track, I bet quite a bit.

Q. You have known Mr. Ursich for how long?

A. Oh, about six or seven years I think.

Q. Do you recall in the course of that period of time when it was that you allegedly gave orders that no longer would they cash any of his checks?

A. Well, to make it very plain, at first, when I first [327] knew him, he would cash a lot of small checks, $20, $10, maybe $50 once in awhile. Pretty soon he started to cash quite a number of big checks, two, three and four hundred dollar checks, and when I saw that, and then a couple of them were turned down at the bank, and they would come back, usually they would have to come back the next day, or we would have to go to get them, because he didn't have the money, so then I gave orders at the Club Royal when they would get a check, to go down to the bank and cash it and for the bartender not to cash checks for him.

(Testimony of A. J. Kahn.)

Q. You did on some occasions cash checks for him? A. Yes, I did.

Q. And it was possible for other people in the employ there to accept checks from him?

A. That is right.

Q. And also, I take it, your instructions were such that the bartender could give him twenty or thirty dollars if he wanted that? A. Yes, sir.

Q. As a matter of fact, he did even go to sea at one time owing you money, didn't he?

A. I don't remember no time, no, sir.

Q. I show you Government's Exhibit No. 31, a check of Ursich for $480.00, and ask you whether or not that isn't a check that was deposited to the account of the Club [328] Royal?

A. Yes, sir; that is right.

Q. Do you remember that check at all, Mr. Kahn?

A. Not particularly, I don't remember that particular check, no, sir.

Q. But at least on March 18 of 1954, he was good for $480, so far as you were concerned?

A. I know I didn't even take the check. I don't know whether I took the check or not. There were several checks. There were part of those checks that were signed by Yale Kahn that I didn't even know, at the bottom, until they come up in Court.

Q. When was it that you first heard the name of the horse that Mr. Ursich bet on at the time you were in Las Vegas, that Ursich wanted to bet on?

(Testimony of A. J. Kahn.)

A. Yale Kahn called me in Las Vegas. It was on a Saturday afternoon.

Q. And you did hear the name of the horse at that time?

A. I am not sure. I think he did say or he told me the horse, he told me he wanted to bet on a horse. I said, "What do you want to bet on?" And I think he told me the horse. I am not quite sure he did, but I think he did.

Q. At least you knew enough so you went that evening to see whether the horse won? [329]

A. Yes.

Q. You must have been looking for some horse. You must have known something about it.

A. Yes, I knew then, because I was interested to find out what the horse done.

Q. Do you suppose you were interested because you played a bet on him yourself?

A. No, I didn't bet. I spent the whole day in the pool.

Q. As a matter of fact, Mr. Kahn, you know that you did accept $500 of a bet on that date, don't you?

A. I didn't accept no such thing

Q. And you know that you did have a conversation with Mr. Zimmerman on that day, didn't you?

A. I didn't talk to Mr. Zimmerman at all.

Q. You didn't call him from the Sands in the morning?

A. No, sir; I did not. If I called, I certainly

(Testimony of A. J. Kahn.)

didn't talk to him. If I called, I talked to Yale Kahn.

Q. Do you know Mr. Julius DeKeyser?

A. Very much so.

Q. Who is he?

A. He has got a bar about two doors away from the Club Royal in the same block.

Q. Does he have another name that he is called by? A. Boots. [330]

Q. He is called Boots. Now, you knew him in 1955? A. Yes, sir.

Q. Isn't it a fact, Mr. Kahn, that on May 22, 1955, you approached Boots and you asked him to see Hubert Ursich and see if "the fisherman" as he is called would change his testimony in this case?

The Witness: Now, Mr.——

Mr. Carr: I object as not being proper cross-examination, not opened in chief and not bearing on any issue in the case.

The Court: Objection overruled.

A. Mr. Dunn, you are just reversing the story. Mr. Boots come to see me on two or three different occasions and propositioned it to me, and I told him, "How could you do this after the man went to the Attorney?"

And he said, "Well, for $10,000, he will change his story."

And I went up to see my attorney, Edgar Hervey, in San Diego, and Mr. Hervey and myself went up to see Mr. Hennessy at the Internal Revenue. We told him the story, exactly what happened.

(Testimony of A. J. Kahn.)

Q. (By Mr. Dunn): As a matter of fact, on May 24, 1955, which was a Tuesday, didn't you see Boots on a street corner by Bradley's?

A. That is right. [331]

Q. In San Diego? A. That is right.

Q. All right, and on that occasion, didn't you say to Boots, "Boots, do you think that guy would change his testimony?"

A. I didn't say no such thing.

Q. And he responded to you, "I don't know"?

A. I didn't say no such thing. Boots came to see me at two or three different occasions; in fact, he talked to me several different times about it.

Q. Have you ever been convicted of a felony, Mr. Kahn?

A. I don't know whether you call it a felony or not. I pleaded guilty under a nolo contendre here in this Court at one time.

Q. To what charge?

Mr. Carr: Your Honor, I know I came with him to Court. It was a nolo contendre that he entered. I know it wasn't a plea of guilty.

Mr. Dunn: Well, can we stipulate that it was to a charge of income tax evasion?

Mr. Carr: That is right.

May I just say this, I don't know whether it has ever been decided that that is a proper question or not. I know of no case where it has been, but I assume I will let it [332] stand unless your Honor knows of such a case.

The Court: I think it is a proper question.

(Testimony of A. J. Kahn.)

Mr. Carr: Very well.

The Court: He can ask him if he has been convicted of a felony and what felony it was.

Mr. Carr: Yes, but he plead nolo instead of being convicted.

The Court: Well, it is the same as a conviction.

Mr. Carr: Has any case ever held to that effect, your Honor?

Mr. Dunn: I would be glad to supply authority to that effect.

Mr. Carr: Very well. I must stand by the Court's ruling.

Q. (By Mr. Dunn): I show you Government's Exhibit 29, the check that is made payable to Walker Atwell for $1000, bearing the endorsement of Walker Atwell, and ask you whether or not you ever received Government's Exhibit 29?

A. Yes, I have seen this check very much. I was working in the office. Mr. Ursich was sitting there on the couch and having a bottle of beer. It was about noon.

Q. Who else was present at that time?

A. Just he and I. At about the time, Kay Marcos came into the office, and she was using the telephone.

Then Mr. Ursich asked me whether I could cash his check [333] for him and handed it to me. I looked at it, and I said, "Walker Atwell, ah," I said, "you just got through telling me a day or so ago that he gave you a bum check for $1000 and that it came back 'non-sufficient funds.'"

(Testimony of A. J. Kahn.)

He said, "That is a replacement of that check, and this check is good. I know Atwell."

I never met him up until that day, as a matter of fact, just that day Ursich asked me to go out to introduce me, and I had a bottle of beer with him.

Q. When was that?

A. On that day, when he said that, I said, "Kay, would you go to the bank and cash the check?"

Q. In whose presence?

A. Mr. Ursich, that is all.

Q. Mr. Atwell was not present at that time?

A. No, sir.

Q. Did you go back to the office and do that?

A. We were in the office at the time.

Q. You came out to see Mr. Atwell?

A. Just a second. I sent Kay Marcos out to cash this check. When she went away, Mr. Ursich asked me to go out and meet Walker Atwell. I never had met him before, but I knew of him because he was a customer of Texas Liquor Stores, so I went out. He introduced me to him and we sat down, I had a bottle of beer with the three of them. [334]

Later I went back in the office. Kay called me back on the telephone and said, "They wouldn't cash the check."

I said, "Why wouldn't they cash the check?"

She said, "I endorsed it 'Texas Liquor Stores' by me."

Well, they wouldn't cash it.

I said, "As long as you are working at Texas

(Testimony of A. J. Kahn.)

Liquor Stores, run up to the Texas Liquor Stores and cash it for us."

She did that, and she came back later and handed the money to me—now, whether she handed the money to Mr. Ursich, I don't know, but the money went to Mr. Ursich.

Q. Well, actually, you accepted the check in payment of some betting obligations, you accepted a bet? A. I didn't do no such thing.

Q. Just answer the question.

A. You asked if I knew about accepting a bet; I didn't do no such thing.

Q. No. My question is. whether or not you accepted a bet in payment of some betting obligations of Mr. Ursich.

A. I didn't do no such thing.

Mr. Dunn: I have no further questions, your Honor.

Mr. Carr: May I have one or two questions on redirect?

Redirect Examination

By Mr. Carr:

Q. Counsel asked you about this Boots DeKeyser coming to see you. Did he come to see you? [335]

A. Yes, sir.

Q. And what was the proposition he made to you?

A. He come in. He parked his car just about half a block away from Bradley's where I take mine, also. He come in, but then when he come in the place, he said, "I would like to see you."

(Testimony of A. J. Kahn.)

I said, "OK, let's go in the office."

He said, "No. I will talk to you outside."

I said, "All right."

We stood outside. We leaned against a mailbox or trash box.

He said, "I understand you are being put to a lot of trouble with this fisherman," he says, "who hangs out at the Club all the time."

I remember he said, "the fisherman," the first thing he said. Of course, we later identified him as Ursich.

Q. Give the conversation.

A. He said, "I can straighten it out for you."

I said, "How can you do that?"

He said, "I can straighten it out for you for about $10,000."

I said, "I don't know about that; that is quite a lot of money."

We talked a little bit as to what the trouble was and he left. [336]

The following morning he came back, and he said this same identical thing. He told me the same story.

Then I says to him, "Now, Boots, how are you going to do that? How can you do something like that?"

He said, "Well, for $10,000, the man will go up there and tell the Internal Revenue that he was sore and he done it in spite, and he will take the blame for $10,000."

(Testimony of A. J. Kahn.)

I said, "OK. Let me talk to you about it—let me think a little bit about it."

I went up and talked to my son Irvin.

Q. To Julius Kahn, you mean?

A. Yes, sir. I told him all about it. He said, "I advise you to go and see Edgar Hervey and see what he says about it."

Q. And did you go to see him? A. I did.

Q. And after that—let me see that exhibit. May I have Exhibit 33, Mr. Clerk, please? Was it then that you and Mr. Hervey accompanying each other proceeded to the Bureau of Internal Revenue——

A. That is right.

Q. ——and gave this statement?

A. That is right.

Q. Which is Exhibit 33?

A. That is right. [337]

Q. Now. Mr. Kahn, did you and Mr. Hervey have a conference with Mr. Hennessy or someone at the Bureau in addition to this statement?

A. Yes, sir.

Q. And did you give him the information, you and Mr. Hervey, about the fact——

A. Yes, sir.

Q. ——that this Boots DeKeyser was trying to collect $10,000 from you?

A. Correct. Mr. Edgar Hervey suggested to Mr. Hennessy that he look into it, and he promised that he would do so, but he did not—we never heard from him.

Mr. Carr: That is all, your Honor.

(Testimony of A. J. Kahn.)

Mr. Dunn: No further questions of this witness, your Honor.

The Court: That is all.

Let me ask you, with reference to this telephone conversation on, I guess, the 27th of March, do I understand that when they talked to you about this $1000 bet, you said you would lay the bet for him if they wired you $1000?

A. That is correct, sir.

Q. Did you tell him where to wire it?

A. Yes, I told him. He said, "No, he couldn't get the money."

I said, "Well, if you can't get the money, I [338] just couldn't bet it for you because I don't have it." because I didn't have the money.

Q. When you hung up the telephone, what was the last, what arrangement did you have, that he was going to wire you $1000, or that you were not going to make the bet?

A. He said, "Well, I couldn't get the money." And I said, "If you couldn't get the money, there is no way of me getting the bet for you." And I think that was the conclusion of that conversation.

The Court: In other words, you told him you weren't going to make the bet?

A. That is right, sir.

The Court: All right.

The Witness: Is that all?

The Court: By the way, this statement, that Exhibit 33 that Mr. Carr referred to, you have read that statement and you did make that statement?

(Testimony of A. J. Kahn.)

A. To Hennessy.

The Court: To Hennessy?

A. Yes, sir.

The Court: Have you read it?

A. Yes, sir.

The Court: All right.

Mr. Carr: Your Honor, we had one other witness we had hoped to bring, but I am afraid that it will be morning [339] before he will get here. We issued a subpoena duces tecum for Van De Kamp's, to get that date. You remember that November 11 date, to prove that Mr. Ursich was at sea. Now, we are ready to rest the case except for that fact, but I don't like to ask that this case go over.

The Court: How long do you want to argue the case?

Mr. Carr: I think I would like to move the Court, first, and if the Court overrules me on that motion, I think we would like half an hour or three-quarters of an hour at the most. I think we can finish it today. I will cut it down.

The Court: Finish it when?

Mr. Carr: Finish it today. I hadn't looked at the time. It is 4:00 o'clock, isn't it?

The Court: Yes, it is 4:00 o'clock.

Mr. Carr: I tell you what we could do. If we could do it this way, start arguing the case, and then recess it for the purpose of reopening for that witness, just for that purpose, tomorrow. Then we can make some progress. It is entirely up to the Court.

The Court: Very well.

Mr. Carr: First I would like to address the Court very briefly on the motion.

The Court: Well, does the Government rest?

Mr. Carr: I don't know. Do you have [340] rebuttal?

Mr. Dunn: I do have some rebuttal, your Honor.

Mr. Carr: I did not realize that. Why don't we close our case, start argument, and then if the Court will grant permission later to reopen and put in that one item of evidence, we can conclude it in the morning. Then, I would like to address a motion to the Court at this time as if our case were closed.

Mr. Dunn: I will be glad to stipulate, if the evidence comes in, in the morning, with the Court's permission, that the case be reopened.

I have a witness here tonight that just came in.

The Court: How long will you take?

Mr. Dunn: Only two or three minutes. He is a telephone company man with evidence of the toll calls.

The Court: You rest with the exception of that?

Mr. Carr: That is right, I rest now, and then I would like to move the Court——

The Court: In the morning I will permit you to reopen the case, then, for the purpose of putting in that evidence.

Mr. Carr: Very well, sir.

The Court: And I imagine that will be very short.

Mr. Carr: Just a moment. If it is confirmed

and what we think it will be, we will put it in very briefly. It will probably take two minutes, your Honor.

The Court: Yes. [341]

Mr. Carr: Now, I would like to move the Court under, I think it is Rule 29 of the Rules of Criminal Procedure—I know a lot of these Rules of Law by heart, but I can't remember the numbers—that the Court enter a judgment of acquittal as to all counts.

Mr. Dunn: Excuse me, but isn't that improper before the rebuttal?

Mr. Carr: I don't think so. The Rule says at any time, I believe.

The Court: As a matter of fact, actually, of course, if it was a jury trial, where you make a motion for judgment of acquittal, you could make your motion for judgment of acquittal after the testimony is all in, and you get the same thing.

Mr. Carr: Well, Judge, one time I let a judge talk me into one of those things and I went up on appeal and the Circuit Court of Appeals disagreed with both of us.

The Court: All right. You make your motion.

MOTION FOR ACQUITTAL

Mr. Carr: Judge O'Connor and I both agreed on it, but the Circuit disagreed with both of us.

I make a motion for judgment of acquittal on each and every Count of the Information, on the ground that the evidence is insufficient to sustain a

judgment of conviction on any and all grounds, and particularly, I will point out again that the evidence has shown conclusively in most— [342] in many of these instances, that these checks, which the witness Ursich, and he is the one substantial witness, if we have one here, who testified at the beginning that all these checks were for bets, we have shown in practically every instance, now, not only by the proof of the Kahn family, but by some independent proof, were not issued for that purpose. Consequently, in such a case, I would say that the preponderance of the evidence or the weight of it would seem to go with the defense; and on the further ground that the evidence is insufficient to establish that Mr. A. J. Kahn was engaged in the business of bookmaking and in particular, that ground, since the statute and the regulations require that anyone accepting a bet, if he had accepted bets, would have to be in the business of a bookmaker.

I won't take up all the evidence. You are rather familiar with the facts, and I submit the motion to your Honor.

The Court: The motion is denied.

(Whereupon, the plaintiff, to further maintain the issues on its behalf, offered and introduced the following evidence in rebuttal, to wit:)

Mr. Dunn: May I call a witness, your Honor?

The Court: Yes.

Mr. Dunn: Mr. Chase. [343]

PORTER CHASE

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: Give us your full name.

A. The first name is Porter. Porter Chase.

Mr. Dunn: We will be able to save time, your Honor.

Direct Examination

By Mr. Dunn:

Q. I will ask the witness to give me some telephone toll slips on Belmont 3-1579 dated March 27, I believe, 1954.

Mr. Carr: What is this gentleman's name, may I inquire?

A. Porter Chase.

Mr. Carr: I probably can save time by stipulating that these are the records kept in the ordinary course of events. That is correct, Mr. Witness?

A. That is correct, yes.

Mr. Carr: By the telephone company, but one of them I want to object to unless it is corroborated with Mr. Kahn.

Mr. Dunn: Well, I would only say this about the slips. The testimony of the Government witnesses were that two calls were placed, one being unsuccessful. It doesn't show on the "Flamingo Hotel" slip that Mr. Kahn was reached.

The second slip which bears a time, dated [344] about 30 minutes or some 30 minutes later does show it went to Mr. A. J. Kahn.

(Testimony of Porter Chase.)

Mr. Carr: There is no question about that one, if I may say so. On the one here I just didn't——

The Court: Let us get it straight.

Mr. Carr: There is no objection to the one to the Sands Hotel.

The Court: Do you agree with counsel's statements?

Mr. Dunn: This is a telephone slip dated March 27, 1954, showing a call from "S. D.," Belmont 3-1579, to Las Vegas, Nevada, to A. J. Kahn, Sands Hotel, 515 P.

The Court: And that is a record?

Q. (By Mr. Dunn): And this is a record of what?

A. That is a record of that telephone toll call.

Mr. Carr: This is a record kept in the ordinary course, kept by the telephone company, and I have no objection to it going in evidence.

Q. (By Mr. Dunn): And the time on the back is the time showing the time the call began and was terminated, is that right? A. That is right.

The Court: It will be received.

The Clerk: Government's Exhibit 35.

(Said document was received in evidence as Government's Exhibit No. 35.) [345]

Mr. Carr: The same stipulation as to this next one, that it is a record of the telephone company kept in the ordinary course of business. But our objection to it will be that it doesn't connect it with

(Testimony of Porter Chase.)

Mr. Kahn, that it doesn't show to whom the call went.

Mr. Dunn: That slip is dated March 27, 1954, from "S D," Belmont 3-1579, to Flamingo Hotel, and showing time that the call was placed as after 4:00 o'clock on March 27, 1954. We will offer it at this time.

The Clerk: Exhibit No. 36.

(Said document was marked Government's Exhibit No. 36 for identification.)

Mr. Carr: To which we object on the ground it is not connected with the defendant.

The Court: You may mark it as an exhibit for identification, and the objection is sustained.

Mr. Dunn: May I have permission to argue it on the facts before we have the final ruling of the Court?

The Court: Yes, all right, go ahead.

Mr. Dunn: I would like to recall to the Court the evidence of Mr. Zimmerman and Mr. Ursich.

The Court: Yes.

Mr. Dunn: Both of whom stated that, first of all, Yale Kahn attempted to get in contact with his father, and he couldn't by telephone, and later Zimmerman put in a call [346] and did reach him at the Sands, at which time Yale and Zimmerman and Ursich all talked.

The Court: That is right.

Mr. Dunn: And that is the reason, to show the

(Testimony of Porter Chase.)

fact at that time, and I think it is a part of the res gestae of that particular fact.

The Court: The objection is sustained; is that all?

Mr. Dunn: I think that is all.

The Court: Is that all?

Mr. Dunn: You may step down.

The Court: Both sides rest?

Mr. Dunn: No, your Honor. The Government doesn't rest at this time. I understood that counsel has one more witness, and I have another witness which I haven't obtained yet and that I hope to have here in the morning. For that reason I would like to keep the Government's case open for one additional Government witness.

The Court: Mr. Carr has rested with the exception of one witness and he has stated what the purpose of his testimony would be.

Now, if you are in the same position, I, of course, would grant you the same opportunity. You have a witness that has not been able to get here, and you tell me just as he told me what your witness will testify.

Mr. Dunn: I will, your Honor. [347]

The Court: But I had intended that you folks would start this argument tonight. I have another case on tomorrow morning at 11:00 o'clock, so I want to make sure that this case is disposed of by 11:00 o'clock.

Mr. Dunn: Yes, your Honor.

The witness is Julius J. DeKeyser, about whom

testimony has been given. He has appeared before the grand jury and given a sworn statement, and I propose to have him in to testify to that. Of course, it is in direct opposition to things the defendant has said, as I understand.

The Court: About how long would it take?

Mr. Dunn: I should only have him on the stand myself for about 12 to 15 minutes, I should say, maybe less. It is just to repeat three or four things that he gave under oath before.

The Court: All right.

Mr. Carr: May I address the Court?

The Court: Yes.

Mr. Carr: I anticipate exactly what he is going to say. He is going to contradict what Mr. Kahn said, I presume.

I would suggest, if it meets with your Honor's approval, that we proceed to argue the case now, with those two things in mind, and if they don't come in, or if they do come in, it isn't going to make any particular difference, as I see it. [348]

The Court: All right.

Mr. Carr: Then we can accommodate the Court, and I would like to get finished myself with the case.

The Court: Very well. You may proceed with the argument.

Mr. Carr: Just for the purpose of argument, then, the case will be deemed closed by both parties.

The Court: It will be deemed closed, except it will be reopened for the specific purpose indicated by you and for the testimony indicated by the attorney for the Government.

Mr. Carr: Yes, your Honor, and one other thing: It may be deemed that I have renewed my same motion, on the same grounds, at this time, subject, of course, to the coming in of this additional testimony.

The Court: Yes.

Mr. Carr: Now, if the Court please——

Mr. Dunn: I believe it is the Government's privilege to open and close with arguments.

Mr. Carr: Oh, yes. I wasn't going to argue the case yet.

Mr. Dunn: I thought you were going to argue the case now.

Mr. Carr: I was just going to add one thing, that I wanted to be clear that I was not trying to take advantage of any technicality; that I am stipulating that his testimony [349] may come in after the arguments and he is doing the same for me, for the purpose of the record.

The Court: Yes.

Mr. Carr: I am sorry.

Mr. Dunn: I so stipulate, your Honor.

The Court: About how long will you want to argue?

Mr. Dunn: Your Honor, in view of the circumstances, I will take about 15 minutes for my opening, if I may, and another 15 for closing.

The Court: 15 minutes for your opening and about 15 minutes to close?

Mr. Dunn: Yes, sir.

The Court: All right. You may make your opening argument; and you want 30 minutes?

Mr. Carr: Well, I don't know, your Honor, that I will take the full 30 minutes, but if I am able to start tonight, your Honor, that is agreeable.

The Court: You go ahead, and we will see when he finishes. You can start now.

(Opening argument on behalf of Plaintiff, by Mr. Dunn.)

(Argument on behalf of Defendant, by Mr. Carr.)

Mr. Dunn: Do you want to hear me now, your Honor?

The Court: Yes, you may proceed.

Mr. Dunn: I didn't expect to go ahead at this time, your Honor. I will do the best I can. I was hoping to [350] accommodate some witnesses I would like to have paid and the Marshal's Office closes at 5:00 o'clock, and we won't be able to pay them after that time. For that reason I hoped to get out at this point.

The Court: All right, we will recess, then, until 9:45.

Mr. Dunn: Thank you.

(And thereupon, at 4:50 p.m., on Thursday, September 6, 1956, a recess was taken until the following day, Friday, September 7, 1956, at 9:45 a.m.) [351]

Friday, September 7, 1956, 9:50 A.M.

The Court: Call the calendar.

The Clerk: No. 24,572-Criminal, United States of America versus A. J. Kahn, for further Court trial.

Mr. Dunn: We are ready, your Honor.

Mr. Carr: The defendant is here and ready.

This morning, your Honor, we received a crew listing brought in by a gentleman, which I might just pass up to the Court. I think counsel is willing to stipulate.

Mr. Dunn: Well, why don't we make a stipulation?

STIPULATION

Mr. Carr: All right. This crew list of the United States Coast Guard shows that the St. Francis, the ship, and Hubert Ursich, as the skipper, or captain, left port on September 28, 1953, and did not return, then, until November 18, 1953. Is that so stipulated?

Mr. Dunn: I will stipulate to that fact, your Honor.

The Court: All right.

Mr. Carr: Then I will return this to the man who brought it.

Mr. Dunn: I have no objection.

The Court: You then have no further evidence, Mr. Carr?

Mr. Carr: No, none, your Honor.

Mr. Dunn: I understand that the defense has rested. [354] I am in this position, your Honor. I

have the witness here. We went a little out of order yesterday, and I am actually going to ask this of the Court with some trepidation. As I understood the proceedings yesterday, we did have the motion for judgment of acquittal, with the representation that this evidence was coming in, to the Court.

The Court: That is right.

Mr. Dunn: The motions as I understood were denied by the Court.

The Court: That is right.

Mr. Dunn: If the Court is satisfied at this time, the Government doesn't want to present further witnesses and argument. We will, if the Court desires, go ahead and present further matters.

The Court: Well, it isn't a matter of what I desire. You put on whatever you wish. Yesterday afternoon the defendant indicated that he had one more witness that he wished to put on for the purpose of producing evidence of the matter which was stipulated to this morning. They obviated the necessity of the witness. He said he didn't care to put on another witness. You indicated that you had one more witness.

Mr. Dunn: Yes, sir.

The Court: And I stated that it would be perfectly proper for you to go on with your argument and then put on [355] the witness.

Mr. Dunn: Would you like for me to complete my argument at this time, then?

The Court: No. If you have a witness to put on, put your witness on. As a matter of fact, after you put your witness on, although the defendant has completed his argument, if the defendant wishes, he

may take a few more minutes of argument to cover these two matters that have gone in this morning, if you wish.

Mr. Dunn: Fine, your Honor.

Mr. DeKeyser.

The Court: And then you may complete your argument.

JULIUS JOSEPH DeKEYSER

a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Give us your full name.

A. Julius Joseph DeKeyser.

Direct Examination

By Mr. Dunn:

Q. Where do you reside?

A. 1270 Mokana, San Diego, California.

Q. And do you know the defendant, A. J. Kahn?

A. Yes, sir.

Q. Do you see him seated here in the courtroom?

A. Yes, sir. [356]

Q. On May 22, 1955, did you have a conversation with Mr. Kahn?

A. Well, I don't know if that is the day; I know it was on a Sunday.

Q. All right. And was that in May of 1955?

A. I couldn't tell you if it was the month or not. I know it was three days before I came up here to the grand jury.

Q. Now, the conversation we are referring to, when did that take place?

(Testimony of Julius Joseph DeKeyser.)

A. Well, I was working. I had just opened my tavern, and Mr. Kahn came into my place and spoke to me.

Q. And all this took place in your tavern?

A. Yes, sir.

Q. Where is that located?

A. 1050 Third Street.

Q. Who else was present at this conversation?

A. There was a gentleman sitting at the bar at the time Mr. Kahn came in. I don't know who the gentleman was.

Q. Did he participate in the conversation?

A. No, he didn't have anything to say.

Q. What was said at that time?

A. Mr. Kahn, he asked me, he said, "Boots," that is [357] what they call me, "Boots, did you hear if Babe would take the money?" I says, "No, I didn't hear it."

Q. Just a moment. Who is Babe?

A. Well, that is Ursich. I said, "No, he never made that statement to me." I said, "A. J.," that is what I call Mr. Kahn—I said, "A. J., if Babe comes in, I will ask him if he made that statement."

And A. J. says, "Well, I heard that he said that."

Well, I says, "I didn't hear it."

So then a young lady walked in. I think she works for the Texas Liquor Company, and she walked in and I didn't say any more.

He said, "That is all right. You can go ahead and talk."

So I don't know—we had a couple more words, and that is all that was said at that time.

Mr. Dunn: No further questions at this time.

Mr. Carr: Your Honor, we would like to hear that first answer read.

The Witness: Maybe you misunderstood me.

Mr. Carr: I am just asking the reporter to read it.

(Record read by reporter.)

Mr. Carr: I don't think we have any questions.

The Court: Is that all?

Mr. Carr: That is all. [358]

Mr. Dunn: Well, your Honor, it is indicated that apparently the reporter doesn't have the correct answer.

The Court: Have him read it again.

(Record reread by reporter.)

The Court: Do you wish to correct a statement?

The Witness: I did not know he had that in there, sir. That is all I said to him. That is all right.

Mr. Carr: No further questions.

Mr. Dunn: No questions.

Mr. Carr: Your Honor, may I just make a few minutes of argument?

The Court: Yes.

Mr. Dunn: May this witness be excused, your Honor?

The Court: Yes.

(Further argument on behalf of defendant by Mr. Carr.)

(Closing argument on behalf of the plaintiff, by Mr. Dunn.) [359]

Mr. Carr: If the Court please, may we request that the Court make findings of fact under Rule 23 of the Federal Rules of Criminal Procedure, which provides that in a case tried without a jury, the Court shall make a general finding and shall in addition on request find the facts specially. We should like to request findings of fact. I assume probably you will make remarks anyway that will amount to that.

The Court: I don't hear you.

Mr. Carr: I assume that you will probably make remarks anyway that will amount to that. I don't think that has been changed under the Rule. You better check and see.

The Court: All right.

Mr. Carr: I have the citation in Volume 327 of the U. S. Reports, but I don't have it present. I don't think it has been changed.

The Court: The Court finds the Defendant guilty on Counts One, Two, Four and Five.

He finds the Defendant not guilty on Count Three.

The matter will be continued for probation report and sentence to October 1, 1956, at 2:00 p.m.

Mr. Dunn: The defendant will remain on the same bond, your Honor?

The Court: Yes, the defendant will be released on his [360] present bond.

Certificate

I, Thomas B. Goodwill, hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 31st day of December, A.D., 1956.

/s/ THOMAS B. GOODWILL,
Official Reporter.

[Endorsed]: Filed January 2, 1957.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 70, inclusive, containing the original

Information;

Waiver of Defendant's Presence;

Motion for Bill of Particulars and Points and Authorities;

Opposition to Motion for Bill of Particulars;

Bill of Particulars;

Notice of Motion for Continuance and Stipulation & Order Shortening Time;

Affidavit of Charles H. Carr in Support of Motion for Continuance;

Stipulation for Continuance;

Waiver of Jury;

Special Findings of Fact;

Notice of Appeal of Defendant, A. J. Kahn;

Application for Order Extending Time for Filing Record on Appeal & Order Thereon;

Motion for Order Staying Sentence of Payment of Fine Pending Appeal and Specifying Terms therefor, and Order Shortening Time, and Points and Authorities;

Order Staying Sentence of Payment of Fine Pending Appeal and Specifying Terms Therefor;

Notice of Giving Bond for Payment of Fine;

Statement of Points On Which Appellant Intends to Rely on the Appeal;

Appellant's Designation of the Contents of Record on Appeal;

and a full, true and correct copy of the Minutes of the Court on

November 17, 1955;
January 16, 30, 1956;
February 6, 1956;
April 30, 1956;
July 10, 1956;

September 5, 5, 6, 7, 1956;
October 1, 1956;
November 26, 1956;

and a full, true and correct copy of the Statement of Docket Entries;

B. 2 volumes of Reporter's Official Transcript of Proceedings had on

September 5, 1956;
September 6, 7, 1956;

C. Plaintiff's Exhibits 1 through 36, inclusive, and Defendant's Exhibits A & B.

I further certify that my fee for preparing the foregoing record, amounting to $1.60, has been paid by appellant.

Witness my hand and the seal of Said District Court this 3rd day of January, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk,

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15404. United States Court of Appeals for the Ninth Circuit. A. J. Kahn, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed January 4, 1957.

Docketed January 7, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 15404

A. J. KAHN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND AFFIDAVIT OF SERVICE BY MAIL

Appellant, A. J. Kahn, hereby serves and files his concise statement of the points on which he intends to rely on the appeal in this case. This statement is served and filed pursuant to the provisions of Rule 39(b), Federal Rules of Criminal Procedure, and Rule 75(d), Federal Rules of Civil Procedure. The points are as follows:

1. The District Court erred in denying appellant's motion for judgment of acquittal at the close of the evidence offered by the Government.

2. The District Court erred in denying appellant's motion for judgment of acquittal at the close of all the evidence.

3. The evidence is not sufficient to support and sustain the Special Findings of Fact.

4. The Special Findings of Fact are not sufficient to support and sustain the general finding of "guilty" of the offenses charged in Counts I, II, IV, and V of the Information in the above-entitled criminal proceedings.

5. The evidence is not sufficient to support and sustain the judgment of conviction of the offenses charged in Counts I, II, IV, and V of the Information in the above-entitled criminal proceedings.

Dated January 4, 1957.

CHARLES H. CARR,
GEORGE E. DANIELSON,

By /s/ GEORGE E. DANIELSON,
Attorneys for Appellant.

[Endorsed]: Filed January 7, 1957.

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IN THE

Supreme Court of the United States

October Term, 1957

No. 770

A. J. KAHN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner, A. J. Kahn, appellant and defendant below, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, made and entered in the above-entitled case on January 8, 1958.

Reference to Opinion Below.

The opinion of the United States Court of Appeals for the Ninth Circuit [No. 15,404] is not yet reported; it is printed in Appendix "A" hereto.

Jurisdiction.

The judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Southern District of California, Central Division, is dated January 8, 1958, and was filed and entered that day.

The jurisdiction of the Supreme Court to review that judgment by writ of certiorari is conferred by Title 28, U. S. Code, Section 1254 (1).

Question Presented.

The principal question presented by this petition is whether a cafe-operator who accepts a total of twenty-nine (29) wagers, in the total amount of $6,930.00, from two old friends, over a seven-month period, is a person "engaged in the business of accepting wagers" within the meaning of Sections 3285 and 3290 of the Internal Revenue Code of 1939 and, therefore, subject to the occupational and excise taxes created and imposed by those Sections.

The Statutes Involved.

The statutes which this case involves are Section 3285 and Section 3290 of the Internal Revenue Code of 1939 [65 Stat. 529] which are set forth in Appendix "B", hereto.

Statement of the Case.

Petitioner was convicted in the United States District Court for the Southern District of California, Central Division, of four counts of a five-count information charging him with wilful failure to pay the taxes imposed by Section 3290 and Section 3285 of the Internal Revenue Code of 1939. The violations were alleged to have occurred in Los Angeles County, California, within the Central Division of the Southern District of California.

The jurisdiction of the United States District Court was based upon Title 18 U. S. Code, Section 3231.

Jury trial was waived by the petitioner and the case was tried before the District Court. Petitioner was convicted (Count I) of wilful failure to pay the occupational tax on wagering imposed by Section 3290, Internal Revenue Code of 1939, and (Counts II, IV and V) of wilful failure to pay the excise tax on wagers imposed by Section 3285, Internal Revenue Code of 1939.

The Court of Appeals affirmed the decision of the District Court. Its opinion is not yet reported but is set forth, *infra,* in Appendix "A" hereto.

Count One charged petitioner with a violation of the statutory requirement (Section 3290 of the Internal Revenue Code of 1939) that a person who is *engaged in the business* of accepting wagers shall pay a special (occupational) tax of $50.00 per year. For this violation he was sentenced to pay a fine of $10,000.00.

Counts Two, Four and Five charged petitioner with violation of the statutory provision (Section 3285 of the Internal Revenue Code of 1939) imposing an *excise tax* of 10% on wagers accepted by persons who are *engaged in the business* of accepting wagers. Petitioner was sentenced to imprisonment for a period of one year on each of Counts Two, Four and Five, the sentences to run concurrently. Execution of the sentences of imprisonment was suspended and petitioner was placed on probation, one of the conditions thereof being that he pay the fine of $10,000.00 assessed on Count One, on or before December 1, 1956.

The evidence presented by the Government at the trial tended to show that during the period from September, 1953, through March, 1954, petitioner accepted wagers on horse races in the total amount of $6,930. This sum

represented the total amount wagered in twenty-nine (29) transactions, twenty-six (26) of which were "placed" by one man and the remaining three (3) were all "placed" by one other man. Both of these men had been personal friends of the petitioner for many years before the time of the wagers. The twenty-nine (29) wagers were "placed" on eighteen days during September and December, 1953, and March, 1954, three months out of the seven-month period.

Petitioner was a man of 64 years who had resided and who had done business in San Diego for about 34 years. At the time of the alleged offenses, 1953-1954, he was actively engaged in business as the manager of five or six restaurants and bars in San Diego which were part of a chain of such establishments which was a family enterprise. [R. 281, 199, 210, 236.] His duties consisted primarily of doing all of the buying for all six of those restaurants and bars, of hiring most of the help, and acting in a supervisory capacity in all of them. [R. 282, 198, 199.]

The evidence established that both of the persons who "placed" bets with petitioner were old friends of petitioner [R. 40-41, 82, 146] and friends of each other [R. 144] until March, 1954, when a disagreement arose between them and petitioner. One of them, Ursich, "placed" 26 of the wagers, between September 4, 1953, and March 18, 1954. The other person, Qualin, "placed" three bets only, all of them at Del Mar race track on September 5, 1953 [R. 140-146.]

With the exception of the Qualin bets, all of the bets were "placed" at a bar-cafe known as "Club Royal," in San Diego,—one of the 5 or 6 such places managed by petitioner. Club Royal was frequented by various book-

makers who often solicited bets from patrons at the bar. [R. 81-82, 126-129, 130, 180, 181, 199-200, 206, 209, 216-219.] The management of Club Royal, including petitioner, tried to run the bookmakers out from time to time but was unsuccessful, and they were good customers and the management "got to tolerate" them. [R. 297-298, 181.] The government's principal witness, Ursich, testified that you could see five or six bookmakers in Club Royal at a given time [R. 130] and that he, personally, placed many bets with them. [R. 81-83, 126-130.]

The betting transactions between petitioner and Ursich were typical of "friendly" or "social" betting; the winner was paid off in cash, no markers were ever used. In this connection Ursich testified, [R. 136]:

"The Court: Did you ever win, Mr. Ursich?

The Witness: Oh, yes; but I never win as much as I lose.

The Court: Well, when you did win, how were you paid off?

The Witness: I was paid off in cash.

The Court: By whom?

The Witness: By Mr. Kahn.

The Court: Were markers used?

The Witness: No, sir; no, sir. Our word was good.

The Court: He never used markers?

The Witness: No, sir. There were times that he owned me as much as $1800 that I didn't collect, and I played it out, lost it." [R. 136.]

Reasons for Allowing the Writ.

1. **In Holding That a Cafe Operator Who Has Accepted a Total of Twenty-nine (29) Wagers, in the Total Amount of $6,930, Placed With Him by Two Old Friends During a Period of Seven (7) Months, Is a Person "Engaged in the Business of Accepting Wagers" Within the Meaning of Sections 3285 and 3290 of the Internal Revenue Code of 1939, the Court of Appeals Below Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court.**

The statutes involved are sections of the Internal Revenue Code of 1939. Their provisions have been carried forward into Sections 4401 and following, Chapter 35, of the Internal Revenue Code of 1954. They are still in effect. Their meaning should be settled by this Court.

Petitioner contends that Sections 3285 and 3290 of the Internal Revenue Code of 1939 created and imposed an occupational tax upon persons *"engaged in the business of accepting wagers"* and an excise tax upon the wagers "placed with" persons so engaged, and that the Congress intended that the purpose of the requirement, "engaged in the business of accepting wagers," was to exclude from tax, and from the provisions of those laws, the purely "social" or "friendly" type of bet and to direct the application of those laws to "commercialized gambling." The wagers upon which petitioner's convictions were based were, at most, of the purely "social" or "friendly" type; he was not "engaged in the business of accepting wagers" and he was not required to pay either the occupational tax or the excise tax on the wagers placed with him. Therefore, petitioner stands convicted of four "crimes" which never have been committed.

The construction which has been placed upon the statutes involved by the decisions of the courts below has created new and different crimes,—constructive crimes,—which the Congress never intended to be created.

It is clear that the Congress intended that the statutes involved and the taxes they created, should apply only to "commercialized gambling" and that the purely "social" or "friendly" type of bet should be excluded from the tax. The Senate and House Reports on the Revenue Act of 1951, of which the statutes involved were a part, contain the following language:

> "*Commercialized gambling* holds the unique position of being *a multibillion dollar, nationwide business* that has remained comparatively free from taxation by either State or Federal Governments. This relative immunity from taxation has persisted in spite of the fact that wagering has many characteristics which made it particularly suitable as a subject for taxation. Your committee is convinced that the continuance of this immunity is inconsistent with the present need for increased revenue, especially at a time when many consumer items of a seminecessity nature are being called upon to bear new or additional tax burdens."
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> * * * * * * * * * *
>
> "Wagers on sports events or contests, to be taxable, *must* be placed with a person *engaged in the business* of accepting such wagers. *The purpose of this requirement is to exclude from the tax the purely 'social' or 'friendly' type of bet.* A person is considered to be in the business of accepting wagers if he is engaged as a principal who, in accepting wagers, does so on his own account. The principals in such transactions are commonly referred to as 'bookmakers,' although it is not intended that any

technical definition of 'bookmaker,' such as the maintenance of a handbook or other device for the recording of wagers, be required. It is intended that a wager be considered as 'placed' with a principal when it has been placed with another person acting for him. Persons who receive bets for principals are sometimes known as 'bookmakers' agents' or as 'runners.' It is not intended that to be 'engaged in the business of accepting such wagers' a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an individual may be primarily engaged as a salesman, and also, for the purposes of this tax, be engaged in the business of accepting wagers." [Emphasis added.]

U. S. Code Cong. Service, 1st Sess., 82nd Cong., 1951, House Report, pp. 1838-1839.

See also:

Senate Report, pages 2090-2091.

There have been few reported decisions to guide the trial courts in their interpretation of the pertinent language in the statutes involved, *viz., "engaged in the business"* of accepting wagers. Certain decisions of the Court of Appeals for the Fifth Circuit make it clear that, in that circuit at least, the statutes involved, and their taxes, are construed as applying only to "commercialized gambling."

Hodges v. United States, 5 Cir. 1955, 223 F. 2d 140, 143;

Sagonias v. United States, 5 Cir. 1955, 223 F. 2d 146, 147.

In the decisions mentioned the transactions upon which the convictions were based were clearly parts of "commercialized gambling" activities and the court was not

required to construe the language, "engaged in the business of accepting wagers."

On the other hand, there is an obviously correct decision of the United States District Court for the District of Rhode Island holding that ". . . the acceptance of a single wager does not make the acceptor subject to this tax, or subject to a penalty for not paying the tax. . . ." *United States v. Forys,* D. C. R. I. 1953, 113 Fed. Supp. 580, 582. The *Forys* decision is of little or no help to the courts which must construe the language of the statutes involved.

In bringing prosecutions under the statutes involved the government officers charged with that responsibility have followed an understandable, though not acceptable, tendency to expand the application of these statutes so as to sweep all wagers, all wagering, and all persons connected with wagering within their provisions, *e. g., United States v. Forys,* D. C. R. I. 1953, 113 Fed. Supp. 580; *United States v. Calamaro,* 1957, 354 U. S. 351, 1 L. Ed. 2d 1394, 1399, 77 S. Ct. 1138. In *Calamaro* this court said (P. 357):

> ". . . Congress did not choose to subject all employees of gambling enterprises to the tax and reporting requirements, but was content to impose them on persons actually 'engaged in receiving wagers.' Neither we nor the Commissioner may rewrite the statute simply because we may feel that the scheme it creates could be improved upon."

In the reported decisions the Courts of Appeals have demonstrated that they are vague and uncertain as to the meaning and application of the pertinent language, "engaged in the business of accepting wagers." In this

case the Court of Appeals, in its decision, said [R. 337; Appendix A]:

> "Though the statutes involved in this appeal are relatively new, and 'engaged in business' is not fully defined as used in them, there is no reason to believe that the definition in relation to the acceptance of wagers should vary greatly from the construction of that phrase as used in other revenue statutes. These definitions have attributed such elements to the 'carrying on' or 'engaging in' a business, as intent, profit, consumption of time, occupation of attention, etc., but have not found any of these items to be completely controlling over all the other elements.
>
> "In *Morton v. Commissioner of Internal Revenue*, 174 F. 2d 302, 303, the Second Circuit said, in conjunction with the determination of the meaning of 'carrying on a trade or business' as it appears in §23(a)(1) I. R. C. of 1939, the predecessor of 26 U. S. C. A. §162(a):
>
> "'Whether the activities of a taxpayer constitute carrying on a trade or business is a question of fact the determination of which by the Tax Court, if adequately supported by the record is ordinarily conclusive on appeal.'"

In *United States v. Simon*, 7 Cir. 1957, 241 F. 2d 308, 310, the defendant contended that the word "business" as used in this statute should be given its ordinary meaning,—that it should refer to an activity in which a person, with continuity, spends a great portion of his time, and *out of which he expects to earn his livelihood or obtain a profit*. The Court of Appeals rejected that interpretation and restricted the meaning of the word to a narrow, exclusionary, purpose, saying:

> "The purpose of the language 'engaged in the business of accepting wagers' was to exclude from

coverage of the Act only bets of the 'purely "social" or "friendly" type.' There is no indication that any other type of wager was excluded. Conversely, the language was intended to include wagers accepted by a principal on his own account, irrespective of whether he was primarily or only incidentally engaged in the acceptance of wagers."

Petitioner submits that the language, "engaged in the business," has a clear, definite and well established meaning when used in our revenue laws. The statutes involved are revenue measures. In other decisions, construing the same statutes, the Supreme Court of the United States has held:

> "The statute was passed, and its constitutionality was upheld, as a revenue measure, *United States v. Kahriger*, 345 U. S. 22, 97 L. Ed. 754, 73 S. Ct. 510, and, apart from all else, in construing it we would not be justified in resorting to collateral motives or effects which, standing apart from the federal taxing power, might place the constitutionality of the statute in doubt. See *id.* 345 U. S. at 31."
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> *United States v. Calamaro*, 1957, 354 U. S. 351, 1 L. Ed. 2d 1394, 77 S. Ct. 1138.

This court has long since adopted and settled the meaning of the term "business," when used in revenue laws, as "that which occupies the time, attention, and labor of men *for the purpose of a livelihood or profit.*" See: *Von Baumbach v. Sargent Land Co.* (1916), 242 U. S. 503, 514, 61 L. Ed. 460, 467, as follows:

> "Were the respondents carrying on business, within the meaning of the Corporation Tax Act? This question was dealt with by this court in the first of the Corporation Tax Cases, *Flint v. Stone Tracy Co.*, 220 U. S. 107, 55 L. Ed. 389, 31 Sup. Ct. Rep. 342,

> Ann. Cas. 1912B, 1312. As the tax was there held to be assessed upon the privilege of doing business in a corporate capacity, it became necessary to inquire what it was to do business, and this court adopted with approval the definition judicially approved in other cases, which included within the comprehensive term 'business' 'that which occupies the time, attention, and labor of men *for the purpose of a livelihood or profit.*'" (Emphasis added.)

The above definition of "business" has been adopted by the United States Court of Appeals for the Ninth Circuit, see:

> *Richards v. Commissioner* (9th Cir., 1936), 81 F. 2d 369, 371-372;
>
> *Section Seven Corp. v. Anglim* (9th Cir., 1943), 136 F. 2d 155, 157-158.

The same rule has been adopted by each of the other Circuits, by the State of California (*Union League Club v. Johnson* (1941), 18 Cal. 2d 275), and seems to be the rule throughout the land. See authorities collected at 12 *Corpus Juris Secundum*, page 767.

In the case at bar there was no evidence whatever that petitioner was "engaged in the business of accepting wagers." Therefore, the District Court and the Court of Appeals below erred in finding and deciding that the petitioner was a person so engaged and subject to the requirements of the statutes involved in this petition.

Conclusion.

There have already been many prosecutions brought under the statutes involved. These statutes have been re-enacted in the Internal Revenue Code of 1954 and are still in effect. There is as yet no clear and settled definition of the critical phrase, "engaged in the business of accepting wagers." That definition is an important question of federal law which has not been, but should be, settled by this court, in order that (1) individual persons who are inclined to place or take bets as a form of diversion may know, with reasonable certainty, whether their conduct subjects them to the provisions of the statutes involved and, (2) so that there will be clear and settled rules for the guidance of the enforcement officers and the courts who will be called upon to enforce and apply these laws.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX "A."

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

A. J. Kahn, Appellant, vs. United States of America, Appellee. No. 15,404, Jan. 8, 1958.

Appeal from the United States District Court for the Southern District of California, Central Division.

Before: BONE, LEMMON and CHAMBERS, Circuit Judges.

BONE, Circuit Judge.

This is an appeal from a judgment of the lower court finding appellant Kahn guilty on four counts of a five count Information. Jury trial was waived by appellant and the case tried before the District Court.

Count One charged appellant with violation of the statutory requirement (Section 3290 of the Internal Revenue Code of 1939) that a person *who is engaged in the business of accepting wagers* shall pay a special (occupational) tax of $50 per year. For this violation he was sentenced to pay a fine of $10,000.[1]

The court found appellant not guilty on Count Three of the Information.

The remaining counts, Two, Four and Five, charged him with failure to pay an *excise tax* of 10% on the

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[1]From the Information—Count One—"During the tax year beginning July 1, 1953, and ending June 30, 1954, . . . defendant A. J. Kahn engaged in the business of accepting wages . . .; by reason of such activity he was required by law to pay the occupational tax (wagering) as imposed by Section 3290 of the Internal Revenue Code, 1939, . . . and, well knowing these facts, the defendant did wilfully and knowingly fail to pay said tax . . ."

amount of wagers under Section 3285 of the 1939 Code for the months of September, 1953, December, 1953, and March, 1954.[2] This tax is imposed on the *amount of wagers accepted* by persons who are *engaged in the business of accepting wagers*. He was committed to the custody of the Attorney General for a period of one year on *each* of Counts 2, 4, and 5, these periods of custody to run *concurrently*, and execution was suspended. Probation, under such "custody," was granted for a period of three years on the condition that appellant pay the fine assessed on Count One, on or before December 1, 1956.

The evidence presented by the Government and sustained by the trial court in its special findings of fact, tended to show that during the three different months pertinent to this appeal, appellant *accepted wagers* on horse races in the total amount of $6,930. This amount repre-

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[2]From the Information—Count Two—"During the month of September, 1953, . . . defendant A. J. Kahn engaged in the business of accepting wagers . . . and did accept wagers . . . upon which wagers there was due and owing . . . an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, . . . which he was required by law, . . . to pay . . .; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax . . ."

Court Four—"During the month of December, 1953, . . . defendant . . . engaged in the business of accepting wagers . . ., and did accept wagers . . . upon which wagers there was due and owing . . . an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, . . . which he was required by law, . . ." to pay . . .; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax . . ."

Count Five—"During the month of March, 1954, . . . defendant . . . engaged in the business of accepting wagers . . ., and did accept wagers . . ., upon which wagers there was due and owing . . . an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, . . . which he was required by law, . . . to pay . . .; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax . . ."

sented the total amount wagered in some twenty-nine transactions, three of which were "placed" with appellant by one man and the remaining twenty-six were all "placed" with him by another individual.

The persons liable to pay both the occupational tax imposed by Section 3290, and the excise tax imposed by Section 3285 of the Internal Revenue Code of 1939, are those who are "engaged in the business of accepting wagers." 26 U.S.C.A. (I.R.C. 1939) §3285(d). The primary question raised by this appeal is whether, under the facts stated above, appellant was "engaged in the business" as required by the Code Sections under which he was convicted.

We believe that the lower court's findings that he was so engaged must be upheld.

Though the statutes involved in this appeal are relatively new, and "engaged in business" is not fully defined as used in them, there is no reason to believe that the definition in relation to the acceptance of wagers should vary greatly from the construction of that phrase as used in other revenue statutes. These definitions have attributed such elements to the "carrying on" or "engaging in" a business, *as* intent, profit, consumption of time, occupation of attention etc.,[3] but have not found any of these items to be completely controlling over all the other elements.[4]

In Morton v. Commissioner of Internal Revenue, 174 F. 2d 302, 303, the Second Circuit said, in conjunction

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[3]Morton v. C.I.R., 174 F. 2d 302, (2d Cir.) cert. den. 338 U. S. 828; Cecil v. C.I.R., 100 F. 2d 896 (4th Cir.).

[4]For example: Cecil v. C.I.R., supra. Intent is important in determining whether a taxpayer is carrying on a business but not necessarily controlling.

with the determination of the meaning of "carrying on a trade or business" as it appears in §23(a)(1) I.R.C. of 1939, the predecessor of 26 U.S.C.A. §162(a):

> "Whether the activities of a taxpayer constitute carrying on a trade or business is a question of fact the determination of which by the Tax Court, if adequately supported by the record is ordinarily conclusive on appeal."

This Court in the recent case of Ramsey v. United States, 245 F. 2d 295, was confronted with a somewhat similar problem. We there indicated that with relation to giving a required bond *to carry on* "the business of a distiller," or to "engage in the business of a distiller," the term "business," as used in the statute, is a word of common usage which needed no formal definition to the jurors.

In applying the reasoning in the above noted cases to the facts in evidence in the case at bar, we are forced to conclude that these facts were sufficient to justify the trial court in determining that appellant was "engaged in the business" of accepting wagers (within the meaning of 26 U.S.C.A. (I.R.C. 1939) §3285(d)).

We are not here dealing with a case wherein the evidence indicated only a single isolated wager which might require, as a matter of law, a finding that the acceptor was not engaged in the gambling business,[5] nor are we concerned with a full-time book-making operation which would require an opposite finding. The evidence presented indicated a continuing relationship between appellant and at least one bettor which included a reasonably large num-

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[5]United States v. Forys, 113 Fed. Supp. 580, 582.

ber of transactions. There was also evidence to the effect that appellant went out of his way to accept wagers from one of the Government's witnesses. It is conceivable that such a relationship would be one of simple social betting, but it is equally, if not more, conceivable that such evidence shows the actions of one engaged in the business of accepting wagers. The difference is largely one of the intention of parties involved—an intention far more easily and reliably determined by a competent trial judge with his opportunity to observe the demeanor of the witnesses, than by this Court.

The portions of the evidence urged by appellant as militating against the findings of the lower court are not of such importance as to allow this Court to upset those findings. The fact that a man is engaged in one form of employment does not preclude him from being engaged in some other pursuit or endeavor at the same time. Nor do the facts that he has very few customers and does not attempt to limit his competition, even though he has the power to do so, force a court to conclude that he is not engaged in a particular business. This is particularly true in the business of accepting wagers where the risks are such as to cause many operators to limit the amount of their business for fear of a crippling loss should their customers win.

Appellant objected to the trial court's inclusion in its special findings of fact of the three bets placed with appellant by Qualin, the individual who, according to the Government's evidence, placed only three bets with appellant. The objection was on the ground that 26 U.S.C.A. (I.R.C. 1939) §3285(e) specifically excludes wagers placed with a parimutuel wagering enterprise. This claim is not persuasive. The fact that the bets were made at

a race track, and that a parimutuel enterprise was there available for the use of bettors, does not bring the Qualin bets within the exclusions from the tax. Section 3285(e) excludes those wagers which are placed with a parimutuel enterprise. The evidence in this case could be fairly interpreted as showing that the wagers objected to were placed *with* appellant even though they were placed *at* the race track.

The judgment of the trial court is affirmed.

(Endorsed:) Opinion. Filed Jan. 8, 1958.

Paul P. O'Brien, Clerk.

APPENDIX "B."

The Statutes Involved.

[Excerpts from the Internal Revenue Code of 1939 (Title 26 U. S. Code)].

SUBCHAPTER A—TAX ON WAGERS.

§3285. Tax

(a) Wagers. There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

(b) Definitions. For the purposes of this chapter—

(1) The term "wager" means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

(2) The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) Amount of wager. In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount

equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(d) Persons liable for tax. Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

(e) Exclusions from tax. No tax shall be imposed by this subchapter (1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

(f) Territorial extent. The tax imposed by this subchapter shall apply only to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States (A) with a person who is a citizen or resident of the United States, or (B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §471(a), 65 Stat. 529.

SUBCHAPTER B—OCCUPATIONAL TAX.

§3290. Tax

A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §471(a), 65 Stat. 529.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

A. J. KAHN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was rendered on January 8, 1958. The petition for a writ of certiorari was filed on February 6, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether there was sufficient evidence to support the finding of fact by the district court that petitioner was engaged in the business of accepting wagers.

STATUTES INVOLVED

26 U. S. C. 3285 provides in pertinent part:

> (a) Wagers.
>
> There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.
>
> (b) Definitions.
>
> For the purposes of this chapter—
>
> (1) The term "wager" means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers * * *.

26 U. S. C. 3290 provides:

> Tax.
>
> A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable.

26 U. S. C. 2707 (b) provides:

> (b) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter who willfully fails to pay such tax, make such returns, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

STATEMENT

In a five-count information filed in the United States District Court for the Southern District of California petitioner was charged with failure to pay the occupational tax required of those engaged in the business of accepting wagers (26 U. S. C. 3290) and failure to pay the 10% excise tax on wagers (26 U. S. C. 3285) accepted by petitioner in 1953 and 1954 (R. 3–6). A jury trial was waived by petitioner (R. 37) and the court found him guilty of failing to pay the occupational tax (count 1) and failing to pay the excise tax on wagers accepted in September, 1953 (count 2), December, 1953 (count 4) and March, 1954 (count 5).[1] He was sentenced to concurrent terms of one year on each of counts 2, 4 and 5 and fined $10,000 on count 1 with the prison sentence suspended and petitioner placed on probation for three years on condition that the fine be paid on or before December 1, 1956.

The evidence showed that the petitioner, a resident of San Diego, was, at the time of the alleged offenses (1953–1954), engaged in managing five or six restaurants and bars in San Diego (R. 281). One of these was the Club Royal in which petitioner had an office (R. 281–283).

Hubert Ursich, an old friend of petitioner, testified that between July 1, 1953, and March 26, 1954, he placed approximately 30 wagers with petitioner (R. 43, 44–74). He testified that these bets were placed at the Club Royal in an office behind the bar occupied by the petitioner (R. 43). "Just in a matter of con-

[1] He was found not guilty on count 3 which concerned wagers during October, 1953 (R. 4).

versation" Ursich would tell Kahn that he would like to bet on "such and such a horse for so much money" and then he would pay by cash or check (R. 44). Thirty-one checks (Gov't. Exhibits Nos. 1–31), four of which bore petitioner's indorsement, were introduced in evidence and identified (except for No. 27; R. 67) by Ursich as checks given by him to petitioner in payment for bets placed with petitioner (R. 44–67). The total value was over $8,000. This witness also testified that in March, 1954, petitioner told him that he was going to Las Vegas and that he "was leaving Mr. Zimmerman in charge" with whom the witness could place his bets (R. 69, 173). The witness then "bet several bets * * * with Mr. Zimmerman", one of which required Zimmerman to call petitioner in Las Vegas for his approval (R. 71, 176).

Another witness, Eddie Qualin, testified that in September, 1953, at Delmar race track he placed three bets ($300 apiece) with petitioner on the horse races (R. 140–146).

At the close of the evidence offered by the government, and again at the conclusion of petitioner's own case, he moved the court for a judgment of acquittal (R. 187, 312). Both times the motion was denied (R. 193, 313). Petitioner's conviction was upheld by the Court of Appeals (Pet. App. A).

ARGUMENT

1. Petitioner contends that the courts below erred in finding that he was a person engaged in the business of accepting wagers and thus required to pay an oc-

cupational and an excise tax (Pet. 6-13). He contends that the wagers accepted by him were "social" or "friendly" bets not within the purview of sections 3285 and 3290 of the Internal Revenue Code of 1939 (Pet. 6).

The question as to whether petitioner was "engaged in the business of accepting such wagers" was a question of fact to be determined by the trier of fact (the district court here). Its determination, if adequately supported by the record, is conclusive on appeal. See *Glasser* v. *United States*, 315 U. S. 60, 80; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 254. Here the district court's finding that petitioner was engaged in the business of accepting wagers in 1953 and 1954 was adequately supported by substantial evidence in the record. It was shown at the trial that from 1948 petitioner was known to be a person who would book wagers (R. 140). During the seven month period covered by the specifications in the bill of particulars (R. 11-13) petitioner booked at least $9070.00 in bets for the two witnesses alone—an average of approximately $1295.00 per month. And it was also shown that petitioner considered his activity in this respect so important that he named Zimmerman, a professional gambler (R. 173), to accept the bets while he, the petitioner, was away. These various factors together justify the finding that petitioner's bets were more than merely "social" or "friendly". There is no occasion for further review by this Court.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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